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CEYLON

REPORT OF THE COMMISSION ON CONSTITUTIONAL REFORM

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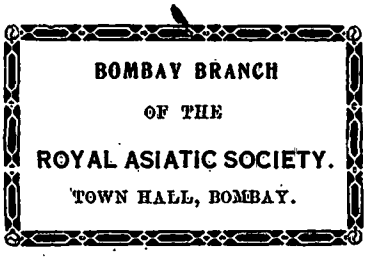

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PROLOGUE

To Colonel the Right Honourable OLIVER STANLEY, M.C., M.P., Secretary of State for the Colonies.

SIR,

1. You announced in the House of Commons on 5th July, 1944, the decision of His Majesty's Government to appoint a Commission to visit Ceylon in connection with the reform of the Constitution; and on 20th September the following terms of reference were made public:—

> "To visit Ceylon in order to examine and discuss any proposals for constitutional reform in the Island which have the object of giving effect to the Declaration of His Majesty's Government on that subject dated 26th May, 1943;* and, after consultation with various interests in the Island, including minority communities, concerned with the subject of constitutional reform, to advise His Majesty's Government on all measures necessary to attain that object."

2. The Commission first met in London on 30th November, 1944, and a series of preliminary meetings followed at which, after examination of the basic documents, we were able to discuss the procedure we proposed to adopt. We also took the opportunity of holding various informal discussions with officials of the Colonial Office and the Treasury concerned with our mission.

3. We left England by R.A.F. Transport Command aircraft on 19th December and arrived in Colombo on the 22nd December. By means of advertisements in the newspapers, we then invited the public to submit proposals designed to give effect to the Declaration of His Majesty's Government of 26th May, 1943,* and to send in criticisms of any such proposals as had been or might be made public.

January 15th, 1945, was fixed as the closing date for the submission of memoranda containing proposals, and 165 were received in all. Between 22nd January and 15th March, 20 Public Sessions were held in the Town Hall, Colombo, at which the writers of representative memoranda were invited to elaborate and discuss their proposals orally. In all, 80 deputations and individual witnesses were examined in this way, and representatives of almost all important shades of opinion were heard. A verbatim record of the evidence taken is available both in London and Ceylon. A list of witnesses and of persons with whom private discussions were held appears in Appendix II.‡

4. Before our arrival in Ceylon the scheme entitled "The Constitutional Scheme formulated by the Ministers in accordance with His Majesty's Government's Declaration of 26th May, 1943" and set forth in Ceylon Sessional Paper XIV dated September, 1944,† had already been placed before the public. On 22nd January, 1945, while Public Sessions were proceeding, the Commission published in the Press the only other complete Constitutional Scheme received—that of the All-Ceylon Tamil Congress—and invited criticisms of it; and on 10th and 12th February a summary of the remaining proposals was similarly published, criticisms also being invited.

5. We left Ceylon, again by Transport Command aircraft, on 7th April and landed in England on 9th April.

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* *See* para. 83.

† This Sessional Paper is reproduced in full as Appendix I (page 119) and will be referred to as "S.P. XIV" throughout this Report.

‡ Page 136.

6. At various periods during our stay we were afforded opportunities to travel throughout the Island and acquaint ourselves with the life of its people.* Either together or individually we visited all nine Provinces and saw for ourselves the remarkable diversity of conditions to which the wide variation of physical features and climate gives rise. We visited both coastal and inland towns and villages, inspected village industries and factories, and gained some first-hand knowledge of all stages of tea, rubber, copra and plumbago production on which, with the growing of food crops, the Island's economy is founded. The many major and minor irrigation works now under construction or restoration, and the surrounding land colonisation schemes with their agricultural, experimental and training centres, proved of particular interest. We were given facilities to inspect schools of different types and teachers' training colleges, and to visit hospitals, maternity and welfare centres and dispensaries, in both towns and villages. We had the good fortune to see many of the ancient monuments and historic temples to be found in all parts of the Island, including the " buried cities " of Anuradhapura and Polonnaruwa. Throughout these visits and inspections, all classes of the community received us with marked courtesy and kindness, and everywhere we were overwhelmed with hospitality. Our thanks are due to the Ministers and Members of the State Council concerned and to the many private individuals whose ready co-operation made it possible for us in so short a time to see and experience so much.

7. In explanation of certain apparent omissions from the list of witnesses, we should perhaps refer briefly to certain factors affecting the political situation in Ceylon at the time of our arrival and during our stay. The Constitutional Scheme set out in S.P.XIV, which had been prepared by the Ceylon Ministers and submitted to you, had been withdrawn by them on 18th August, 1944. Nevertheless, you had made it clear that the Commission could regard it as one of the Schemes to be considered. In this situation none of the Ministers submitted memoranda to us or appeared before us in Public Session, though, as will be seen from the list at Appendix II, the Hon. Mr. D. S. Senanayake, Minister for Agriculture and Lands, Vice-Chairman of the Board of Ministers and Leader of the State Council, had an opportunity of expressing his views to us in a series of most valuable private discussions.

8. Moreover, before our arrival, a number of Members of the State Council, including certain Ministers, had declared their intention of continuing to press for full Dominion status and of non-co-operation with the Commission. This being so, these gentlemen did not appear before us. Their views, however, became well known to us through the Press and other channels, and not least through the Debate held in the State Council during our stay, on the Ceylon (Constitution) Bill, a measure designed to confer immediate Dominion status which passed its third reading on 22nd March, 1945. We feel bound to record our regret, however, that we should thus have had no opportunity of discussion with representatives of a section of public opinion whose contribution to our understanding of the present stage of political development in Ceylon might have proved useful.

* A detailed itinerary will be found in Appendix III, page 139.

CHAPTER I

THE HISTORICAL BACKGROUND

9. A brief reference to the history of Ceylon is necessary in order to explain how its problems, racial, religious and social, arose.* Since the dawn of history, the Island has been subjected to invasions and, for a variety of reasons, the successive waves of invaders who settled there and became the ancestors of the present population have never been completely fused into a united and homogeneous people. The main source of these invaders was naturally India, and it was thence that, according to tradition, the Sinhalese, who are the majority community, came in the sixth century B.C. When their age-long struggle began with the Tamils, the principal minority community, who also came from India, is obscure. In the course of it, considerable blending of the two races undoubtedly took place, but the fact that the Sinhalese adopted Buddhism, while the Tamils remained Hindus, tended to maintain the distinction. The predominance of the Tamils in the extreme North, where they were able to maintain close contact with their fellow Dravidians in India, while the Aryan Sinhalese in Southern Ceylon were permanently cut off from their original home in North India, also helped each to preserve their separate traditions, and the two languages survived. The Sinhalese, who number to-day about four millions, and the Ceylon Tamils, of whom there are nearly 700,000, are thus the descendants of the early settlers in the Island.

10. The first Mohammedans to establish themselves in Ceylon were the Arabs, who came as traders from the shores of the Persian Gulf in the eighth century A.D. They originally settled near the coast and only gradually extended their activities inland. By the fifteenth century they had won for themselves a position of considerable importance. Their religion guaranteed their survival as a distinct community and the Moors, as they came to be called, now number nearly 400,000. They are widely distributed throughout the Island with several quite considerable concentrations.

11. The first Europeans to settle in Ceylon were the Portuguese, who came principally in search of spices, and sought to profit from the great achievement of their navigators by monopolising the trade between Europe and the east. From 1505 onwards, they gradually acquired control of the Western Maritime Provinces, and in 1619 also established themselves in the north. Animated by crusading zeal, they succeeded in converting large numbers of the inhabitants to Christianity, and the chief permanent consequence of the Portuguese occupation is the existence of the large Roman Catholic community of about 480,000, mainly, though by no means exclusively, Sinhalese.

12. Meanwhile, the Dutch had succeeded in establishing themselves in the Moluccas. They were engaged in a struggle with Spain for their independence in Europe, and when Spain and Portugal had been united under Philip II, they naturally felt free to attack the latter's Eastern settlements. Colombo was captured in 1656 and Jaffna two years later. The Dutch, like the

* A more complete summary will be found in the Report of the Special Commission on the Constitution (Donoughmore Report) 1928 (Cmd. 3131), Chapter II.

Portuguese, confined their attention to the Maritime Provinces, where their East India Company built warehouses and forts to organise and protect their trade. Ceylon owes to the Dutch occupation her Roman-Dutch law and the Burgher community, now about 30,000 strong, which has played, and still plays, a significant part in the public and professional life of the Island. It was during the Dutch period also that the Malays were introduced as soldiers. Though racially quite distinct from the Moors, they are Mohammedans in religion and add about 18,000 to the total Muslim population.

13. Just as the union of Spain and Portugal exposed Ceylon to the attacks of the Dutch, so the overrunning of Holland by the French Revolutionary forces, with whom Great Britain was at war, led the British to invade the Island, in order to deny to the French Navy the fine natural harbour of Trincomalee, and to obtain the use of a naval base from which to operate in the Bay of Bengal. The Dutch Governor surrendered Colombo and all Dutch territory in Ceylon in 1796, and under the terms of the Peace of Amiens in 1802, Great Britain retained it as a British possession. It was thus that Ceylon became a Crown Colony. With the cession of the Kandyan or inland provinces to the British Crown in 1815, the Island may be said to have been united politically, and by 1833 it had been provided with a complete administrative system.

14. The Kandyan inhabitants of the interior had not experienced the consequences of Portuguese and Dutch occupation, and the inevitable differences between upland and lowland peoples had thus been accentuated. This distinction between Kandyan and Low Country Sinhalese has been insensibly blurred in the course of the last hundred years; but it has not yet completely disappeared. Of the four million Sinhalese, roughly one-third may be said to be Kandyan.

15. The economic development of the Island under British initiative added further elements to the complex of communities. Indentured labour was imported from India to build roads and clear land for the establishment of plantations, where first coffee, and later and more extensively tea, was grown. These Indian labourers, mainly Tamils, to-day number between six and seven hundred thousand; that is, rather less than the long-established Ceylon Tamils* to whom reference has already been made. Other Indians, merchants and petty traders, have settled widely in the Island, and communities, such as the Malayalis, are found in the towns employed in skilled trades and domestic service. There are about 10,000 Europeans mainly engaged in the management of the up-country plantations or in the financial and commercial business of the Port of Colombo.

16. The last decennial census was taken on 26th February, 1931, but its scope was limited owing to the financial crisis of that year. At this census, Ceylon had (inclusive of military and shipping personnel) a total population of 5,312,548, which was 17.9 per cent. more than in 1921. Statistics of races were not collected in 1931, except in the Colombo Municipality and on the plantations—or estates as they are now called—but on the basis of the incomplete census of 1931, and allowing for the increase of population since then, the chief constituents of the population of to-day may be roughly estimated as follows† :—

* Throughout this Report we shall use the terms "Ceylon Tamils" and "Indian Tamils" to distinguish between the two communities.

† For a more detailed analysis of the population figures *see* Appendix IV.

1. Sinhalese:		
Low Country		2,596,000
Kandyan		1,467,000
2. Tamils:		
Ceylon		697,000
Indian		
(Estate Workers)		650,000
(Others)		162,000
3. Muslims:		
Moors		380,000
Malays		18,000
4. Burghers...		30,000
5. Europeans		10,000
6. Others		50,000
Total		6,060,000

Divided according to the chief religions, the population shows:—

	Per cent.
Buddhists	61
Hindus	22
Christians	10
(Roman Catholics, 8 per cent.)	
Muslims	7

17. The caste system is present in Ceylon, but is fortunately far less extensive and rigid than in India. There are a number of castes among the Sinhalese, but the distinctions between them are gradually becoming blurred. This does not yet appear to be the case among the Tamils in the Northern and Eastern provinces, where there is a depressed class estimated to amount to about 100,000 persons.

18. The relative permanence of the strata of society laid down in the course of Ceylon's history may be ascribed to three main causes—location, religion and occupation. Location divides the Ceylon Tamils of the Northern Province from the Sinhalese; religion sharply distinguishes between the Sinhalese, the Tamils, both Ceylon and Indian, and the Muslims; while occupation separates the Indian Tamils on the plantations from the typical small cultivators, whether Sinhalese or Ceylon Tamil. To these differences, which need not in themselves have led to friction in a static community, have been applied the dynamic Western conceptions of nationalism and democracy, which naturally tend to break up a stratified society. Nationalism, if it is to be a unifying force, requires the elimination of communalism from political life. It is also intolerant of external restraint. Democracy in which "each shall count for one and not for more than one" demands for its free operation a wider tolerance in religion, an understanding of the conflicting claims of race and language and a willingness to compromise on major political issues after full and free discussion.

CHAPTER II

CONSTITUTIONAL DEVELOPMENT UP TO THE DONOUGHMORE CONSTITUTION OF 1931

19. After the Dutch maritime settlements in Ceylon were surrendered to the British in 1796, they were administered by the East India Company as part of the Madras Presidency until 1802, when, as we have already mentioned, Great Britain gained permanent possession of the Island by the terms

of the Peace of Amiens, and made it a Crown Colony. Under the Constitution then introduced, the Governor, answerable only to the Secretary of State and, through him, to the British Parliament, enjoyed extensive powers, administrative, legislative and judicial. He could seek the advice of his Council, consisting of the Chief Justice, the Commander-in-Chief and the Chief Secretary, but was under no obligation to accept it. After the cession of the Kandyan Provinces and their subsequent revolt and settlement, they were administered separately through officials appointed by and responsible only to the Governor.

20. In 1823 a Royal Commission was appointed to investigate the administration of the Island. In their instructions were included, *inter alia*, an enquiry into the powers exercised by the Governor, the effectiveness of the Council and the condition of revenue and expenditure. The main burden of the investigation fell on the shoulders of Lieutenant-Colonel W. M. G. Colebrooke, who proved indefatigable in visiting all parts of the Island and collecting a great quantity of valuable information. He had very definite views on matters of principle, based, consciously or unconsciously, on the teachings of Adam Smith and Jeremy Bentham. The obligation on the inhabitants to perform customary service (*rajakariya*) seemed to him objectionable because it tended to stereotype methods of cultivation and to prevent mobility of labour; and the Government monopolies, particularly in cinnamon, hindered the proper growth of private enterprise in trade. For these reasons he did not hesitate to recommend the abolition of customary service and monopolies. He found that the Governor's powers were practically unlimited, a state of affairs he strongly condemned. Nor could he approve of the differences in the administration of the Maritime and Kandyan Provinces.

21. Colebrooke's principles, fully applied, would have resulted in a strictly constitutional Governor obliged to consult his executive officers, and a Legislature based on some form of representation. He pressed them so far as the circumstances of the time allowed. Unification of the administration throughout the Island was to put an end to the special powers exercised by the Governor in the Kandyan Provinces, and a Council of seven was to share with the Governor executive responsibility. The creation of a Legislature presented a serious problem in a country where, as he recognised, "the people are unprepared for popular institutions." Accordingly, he recommended the formation of a Legislative Council which would, he thought, form an essential part of any Legislature for which the Island might be fitted at some future date.

22. By an Order in Council of 28th September, 1833, the recommendations made by Colebrooke were in the main enforced. The Executive Council was to consist of five members under the chairmanship of the Governor—the Commander of the Forces, the Colonial Secretary, the Queen's Advocate, the Colonial Treasurer and the Government Agent for the Central Province. The Governor, however, retained the right to disregard the expressed views of the Council, provided that he furnished the Secretary of State with a full report of the matter at issue. The Legislative Council was to contain nine Official and six Unofficial Members, the Unofficials to be nominated "as far as possible in equal proportions from the respectable European merchants or inhabitants and the higher classes of natives." The new Council was constituted on 1st October, 1833. After some initial difficulties, Unofficial Members were eventually nominated, including a Sinhalese, a Tamil and a Burgher. A beginning was thus made in constitutional government in which the Ceylonese had a share.

23. The fundamental principles of the Constitution of 1833 survived until 1910. During this long and important period in the history of Ceylon, it was naturally severely criticised on frequent occasions and reforms were demanded. The Official majority in the Legislative Council, the principle of nomination rather than election, the meagre representation accorded to the Ceylonese, and the absence of all control over the Executive Council, especially in the matter of finance, were obvious points for attack. Small concessions were made from time to time; but the demand for representative government was always resisted by the Colonial Office on the ground that any system of suffrage which could be justified would give power to the Europeans and Burghers to the disadvantage of the great majority of Ceylonese. In judging the sincerity of this objection, it must be remembered that the right to vote in Great Britain was very much restricted even after the Reform Act of 1832. The most insistent demand was for a majority of Unofficials in the Legislative Council. This was particularly strong in times of depression when the Government reduced expenditure and thus curtailed the outlay on the construction of roads, as at the time of the economic crisis of 1847, and it came to a head again in 1865 over the question of the contribution towards the military establishment. The Europeans and Burghers then founded the Ceylon League to press for an Unofficial majority.

24. It was not until 1889 that the number of Unofficial Members of the Legislative Council was increased to eight by the addition of two to represent the Kandyans and the Muslims. They were now eight in all—a Tamil, a Low Country Sinhalese, a Kandyan Sinhalese, a Muslim, a Burgher and three Europeans. The official majority was reduced to one. But two new and powerful factors were now beginning to operate. As the century wore on, the whole conception of the function of government was changing and there was a growing presumption in favour of a more active intervention in economic development and social reform. The emergence of an educated Ceylonese Middle Class which demanded a share in the government of the Country had also to be reckoned with. The Sinhalese and Tamils put forward claims for the introduction of territorial representation by election to the Legislative Council. Eventually, by Royal Instructions dated 24th November 1910, a new departure was made. In a Council of eleven Official and ten Unofficial Members, four of the latter were to be elected—two Europeans, one Burgher and one other Ceylonese. The electoral rolls were based on a literacy test. The other six Unofficials were to be nominated, viz., two Low Country Sinhalese, two Tamils, one Kandyan Sinhalese and one Muslim. It will be noticed that the Official majority was still maintained. The new Legislative Council met for the first time on 16th January, 1912. The principle of election had been admitted and, as it happened, there was a departure from communal representation, for the educated Ceylonese electorate returned a Tamil.

25. The agitation for further reform of the Constitution was greatly stimulated by events during the Great War of 1914 to 1918, particularly when the principles of future British policy towards India were defined, after the Montagu-Chelmsford discussions, as the gradual development of self-governing institutions in the direction of responsible government. In 1917 the Ceylon Reform League and the Ceylon National Association sent a memorial to the Secretary of State in which they asked that the Legislative Council should have a majority of Unofficials mainly returned by territorial constituencies. Much more specific claims were put forward two years later by the Ceylon National Congress, in which the Low Country Sinhalese were predominant. They asked for a Legislative Council of about fifty, four-fifths of whom were to be elected territorially on a broad male and a more limited female

franchise. The other one-fifth was to consist of nominated Officials and Unofficials, the latter to be selected to represent important minorities. At least half of the members of the Executive Council should be Ceylonese chosen from among elected members of the Legislative Council.

26. After consultation with the various interests in the Island, an Order in Council was promulgated on 13th August, 1920, which greatly broadened the basis of the Legislative Council. Its membership was increased to thirty-seven, fourteen being Officials and twenty-three Unofficials, thus for the first time giving the latter a majority. Of the twenty-three Unofficials, eleven were to be elected territorially, three for the Western Province and one each for the other eight Provinces; five were to be elected by special constituencies, two by Europeans, one by Burghers, one by the Chamber of Commerce and one by the Low Country Products Association. Two nominated seats were given to the Kandyans, one each to the Indians and the Muslims, and three others were provided for any interests which had not secured representation already. The principle of representative government was thus conceded, the constituencies being partly territorial (11) and partly special (5); the number of Nominated Members was reduced to seven. By Royal Instructions to the Governor, three Unofficial Members were also added to the Executive Council.

27. The Ceylon National Congress immediately expressed its strong dissatisfaction and asked for a real and substantial majority in the Legislative Council and a much wider franchise. As it largely represented the views of the Low Country Sinhalese, its claims evoked counter-proposals from the other sections of the population now compendiously known as the minorities. Since both parties asked for a Legislative Council of forty-five, their divergence of views can best be indicated by their respective ideas as to the composition of this total. The one desired twenty-eight and the other only nineteen to be elected territorially. As to the balance of seventeen in the Congress scheme, eleven were to be reserved for minorities and six for Officials; of the balance of twenty-six in the Opposition's plan, eleven were to be communally elected and fifteen nominated, twelve being Officials and three Unofficials.

28. By the Ceylon (Legislative Council) Order in Council, 1923, a new legislative body was constituted, consisting of twelve Official and thirty-seven Unofficial Members. The Official Members were made up of five *ex officio* Members (Senior Military Officer, Colonial Secretary, Attorney-General, Controller of Revenue and Treasurer) and seven other persons holding public office under the Crown and designated Nominated Official Members. The growing pressure for the election of Unofficial Members was met by providing that twenty-three should be elected territorially and six communally (three Europeans, two Burghers and one Western Province Ceylon Tamil) and that three Muslim and two Indian members should be nominated until such time as arrangements could be made for election, the franchise in all cases being based on an income or property qualification and a literacy test. Provision was made for only three Nominated Unofficial Members. Normally the Governor was to make laws " for the peace, order and good government of the Island," with the advice and consent of the Council. He could, if he chose, preside at its meetings and the initiation of any Money Bills rested with him. If he was of opinion that the passing of a Bill or of any clause of it or any amendment to it was of paramount importance, he could declare it to be so, and then the voting in the Council would be limited to the *ex officio* members and the Nominated Official Members, i.e., to twelve. This method was intended for use only in exceptional cases, and when the Governor employed it he was required to report his reasons to the Secretary of State.

29. This Constitution did not prove workable. The new Legislative Council was not formally inaugurated until 15th October, 1924, and within three years of that date the Secretary of State announced the appointment of a Special Commission under the chairmanship of the Earl of Donoughmore with the following terms of reference:—

"To visit Ceylon and report on the working of the existing Constitution and on any difficulties of administration which may have arisen in connection with it; to consider any proposals for the revision of the Constitution that may be put forward, and to report what, if any, amendments of the Order in Council now in force should be made."

30. The Donoughmore Commission found that the principal defect in the Constitution was the unsatisfactory relation between the Executive and the Legislature. The process which had begun in 1920 of giving the Unofficial Members a majority in the Legislature had created a new situation. By successive stages it had reached a point at which the principle of representative government had been conceded, but the elected representatives were not in any degree responsible for the conduct of the government. While the Legislative Council was unable to implement its decisions, the Governor, as Head of the Executive, could not enforce his will unless he secured the consent of the Council, except by the use of a special procedure which, if frequently employed, would reduce representative government to a sham. If he hesitated to adopt this course, he had to attempt by one means or another to get the support of a majority in a Council in which the Elected Members tended to form a permanent opposition, partly because they felt that that was the only way open to them to exercise any power, and partly because they knew that in any event they could not be called upon to assume responsibility. It is, of course, conceivable that the Constitution might have been worked successfully had there been a general desire to co-operate in doing so; but such co-operation would have meant that the Elected Members, now enjoying the substantial majority for which they had agitated, would have had to remain content not to press for responsible as distinct from representative government.

31. There is no need to recapitulate here the remedies which were suggested to the Donoughmore Commission or their criticism of them. Similar proposals have again come up for consideration and will be examined later in our Report. The Donoughmore Commissioners recommended that an Order in Council should be promulgated which would "transfer to the elected representatives of the people complete control over the internal affairs of the Island, subject only to provisions which will ensure that they are helped by the advice of experienced officials and to the exercise by the Governor of certain safeguarding powers."* To this end they suggested that the existing Legislative Council should give place to a State Council with both legislative and executive functions. The State Council would divide itself into seven Executive Committees, each of which would elect its Chairman, and those seven Chairmen, together with the Chief Secretary, the Treasurer and the Attorney-General—to be called the Officers of State—would form a Board of Ministers, though the Officers of State would not have votes either in the State Council or the Board. The existing Executive Council would be abolished and the Board of Ministers would become responsible for the general conduct of the business of government and in particular for preparing the annual budget and estimates.

The complete abolition of communal representation was recommended and the new State Council was to consist of sixty-five Members elected territorially, three *ex-officio* Members, and nominated members up to a maximum

* Report of the Special (Donoughmore) Commission on the Constitution, Cmd. 3131, p. 149.

of twelve if the Governor considered it necessary to make the body more representative. The suffrage was to be extended to all men over twenty-one years of age and to all women over thirty years of age who applied to be registered as electors and had resided in the Island for a minimum period of five years. Income, property and literacy qualifications were to be abolished.

32. This amounted to a recommendation of responsible government, but in a novel form. Owing to the absence of political parties, it was felt that all members of the State Council should be given some experience of and some share in administration—hence the device of the seven Executive Committees. This arrangement made it possible, though it by no means ensured, that the Board of Ministers, consisting of the Chairmen of the Committees, might be composite, containing representatives of the different communities. If so, the system might prove acceptable to the minorities; if not, the abolition of communal electorates and the grant of universal adult suffrage would undoubtedly arouse their serious apprehensions; only the working of the new Constitution would show.

33. In this summary of constitutional development prior to the Donoughmore Constitution of 1931, attention has been mainly directed to the changes in the structure of the Legislative Council. They illustrate not only the stages by which some degree of representative government had been attained by 1923, but the emergence of rival claims among the Ceylonese immediately the Unofficial element had gained a majority. It was inevitable that the largest community should advocate territorial representation, while the minorities clung to the principle of communal representation. This issue was first clearly defined in 1917 and it soon became one of major importance. The Orders in Council of 1920 and 1923 incorporated both principles. The Donoughmore Commission of 1928 recommended that communal representation should be abolished.

CHAPTER III

THE DONOUGHMORE CONSTITUTION: THE FIRST STATE COUNCIL, 1931-36

34. We shall review later in this Report the evidence we have received on the working of the present (Donoughmore) Constitution. Before doing so, however, we think it necessary to record the circumstances in which the Constitution was adopted, the series of efforts made to get it amended, and the general progress, particularly in the social sphere, which may fairly be ascribed to its operation.

35. The Report of the Donoughmore Commission was presented to Parliament in July, 1928. As soon as it had been received and studied in Ceylon, a series of debates was initiated in the Legislative Council on 27th September; and on the 14th November a critical point was reached when the Governor, on the instructions of the Secretary of State, intervened. He informed the Council that the recommendations of the Commission must be regarded as a whole, and that amendments which touched matters of principle would therefore not be accepted. During the debate the Unofficial Members had succeeded in carrying a number of motions which, taken together, would certainly have completely changed the structure of the proposed new Constitution. It was resolved, for instance, by a majority of fifteen, that government by Executive Committees as recommended in the Report was " not suited to

local conditions " and " inacceptable to the people." It was also resolved by a majority of twelve that Ministers should be elected by the whole Council, and not by the Executive Committees; and there were large majorities against the proposed extensions of the Governor's powers. On the question of the franchise there was a decisive vote in favour of making the age for qualification the same for males and females; but a motion for the retention of the literacy qualification was carried only by a narrow majority.

36. Informal discussions then took place between the Governor (Sir Herbert Stanley) and the various sections of the Legislative Council, with a view to reaching an agreement. The result is set out in detail in a despatch to the Secretary of State of 2nd June, 1929, in which the Governor had to admit that he saw no hope of securing the support of a large majority of the Unofficial Members. The real difficulty turned on the question of the franchise. The recommendation of universal adult suffrage, without income, property or literacy qualification, raised two issues, the one economic and the other communal. Of these the communal proved by far the stronger. The " leap in the dark " alarmed those who feared that " socialistic " legislation would overstrain the financial resources of the country. This was the view expressed by Sir Ponnambalam Ramanathan, the veteran leader of the Council, who argued that educational advance should precede general enfranchisement. No doubt he did so in all sincerity; but unfortunately it could be insinuated that he was biased because his community—the Ceylon Tamils—would enjoy a distinct advantage in a literacy test, particularly over the more backward Kandyans. The Sinhalese, on the other hand, were prepared to accept universal suffrage, but with the important proviso that the franchise of the Indian estate labourers should be much more restricted than the Donoughmore Commission had contemplated. Their attitude, theremore, might be represented as favourable to universal suffrage, without income, property or literacy tests (but with special limitations on the Indian community) because an unrestricted suffrage would give considerable advantage to the Sinhalese.

37. Thus, on analysis, it was the proposal to abolish communal representation that was at the root of the difficulty, for in the existing Legislative Council the minority communities enjoyed, man for man, a greater voting power than the Sinhalese. The majority community would naturally welcome the removal of this disparity; but it was anxious that its position should not be assailed in the future by the growth of Indian representation. The smaller minority communities—Muslim, Burgher and European—were of course in danger of virtual political extinction, if universal adult suffrage were adopted. The Muslims might win one or two seats by the votes of their own community; but the Burghers and Europeans had no possibility of doing so. For them it was generally conceded that something would have to be done, and the only possible course was the substitution of nomination for communal electorates, thus attaining the same end by different means.

38. It became increasingly clear that the chances of getting the new Constitution accepted depended very largely on an understanding with the Sinhalese Members of the Council as regards the Indian franchise. The Commission had suggested that a period of five years' residence was a sufficient indication of an " abiding interest " in Ceylon or of " permanent settlement " there. This was not considered satisfactory. As a result of negotiation the Governor proposed that the principle of domicile should be made the standard test for all.* This would mainly affect the Indian labourers employed in the plantations (as it was intended to do); Indian

* The Indian franchise, and the complications which have arisen out of the domicile test, are discussed more fully in Chapter X paras. 205–222.

merchants and traders could qualify for the vote by other means, for it was suggested that for them the franchise conditions of the 1923 Constitution, with respect to income, property and literacy qualifications, should be retained.

39. The other difficulties proved less formidable. Mention has been made of the fact that a substantial majority of the Unofficial Members of the Council rejected the proposed Executive Committee system on the ground that it would cause so much delay in the transaction of business as to be unworkable. The position of a Minister, appointed by his particular Executive Committee, would, they felt, be lacking in authority. They anticipated, too, that there would be constant bargaining between the members of the Board of Ministers so elected, and that the resultant compromises would prevent a coherent policy from emerging.

40. The Unofficial Members of the Council had rejected the proposed extension of the Governor's powers by large majorities. They objected in particular to the suggested additions to the subjects in respect of which his assent to legislation might be refused, and in general to the wide application of his reserve powers.

41. On 10th October, 1929, the Secretary of State announced his decision that, with certain modifications, the recommendations of the Commission should be put into operation. He stated definitely that he was unwilling to accept any amendments which upset the balance of the scheme. This involved the acceptance of the system of Executive Committees and also the enlarged powers of the Governor, which the Secretary of State considered essential as safeguards, in view of the fundamental changes envisaged—abolition of communal representation, universal adult suffrage, and transfer of executive authority to a State Council. A division was taken on 12th December, 1929, on the motion " that it is desirable in the interests of Ceylon that the constitutional changes recommended by the Special Commission on the Constitution, with the modifications indicated in the Secretary of State's despatch of 10th October, 1929, should be brought into operation." Nineteen Unofficial Members voted for and seventeen against acceptance.

42. The Donoughmore Commissioners had recommended the redelimitation of constituencies, and when this had been completed the first elections for the new State Council were held in June, 1931. They resulted in the return of thirty-eight Sinhalese (twenty-eight Low Country and ten Kandyan), three Ceyon Tamils, two Indian Tamils, two Europeans and one Muslim. The small representation of the Ceylon Tamils was due to a boycott of the elections, as a protest against the abolition of communal representation, and four seats in the Jaffna Peninsula were not filled. To fill the nominated seats, the Governor appointed four Europeans, two Burghers, one Indian and one Muslim. Seven Executive Committees were constituted and the Chairman of the Committee for Home Affairs, the Hon. Mr. D. B. (later Sir Baron) Jayatilaka, was elected Leader of the Council. It should be noted that the total membership of the State Council under the Ceylon (State Council) Order in Council, 1931, was sixty-one (fifty elected, eight nominated and three Officers of State), while the Donoughmore Commission had recommended eighty (sixty-five elected, twelve nominated and three Officers of State). The reduction in Elected Members from sixty-five to fifty may have meant a more than proportionate reduction in the representation of minorities.

43. The Donoughmore Commission had been appointed in August, 1927, because it was alleged that a virtual *impasse* had been reached under the existing Constitution. Had the difficulties now been resolved? The adoption of the new Constitution by a meagre majority of two suggests that they had not.

Apart from any defects which might be discovered in the actual working of the new scheme, there were two main grounds for dissatisfaction, the one possibly inherent in the situation, and the other, if not created, certainly accentuated by the change. On the one hand, the Constitution did not confer full responsible government, which still remained the objective of a certain body of opinion; on the other hand, the abolition of communal representation had aroused the apprehension of the minorities.

44. It is not surprising, therefore, that in July, 1932, the question of the reform of the Constitution was again raised, on this occasion by a private Member of the State Council, Mr. E. W. Perera. Mr. Perera moved a series of seven resolutions, six of which were adopted. They dealt largely with the Governor's powers and the alleged diarchy created in the Board of Ministers by the allotting of important administrative functions to the three Officers of State. A seventh resolution which condemned the Executive Committees on the grounds that they led to divided responsibility, delays in administration and were " unsuited for the government of a country," was decisively rejected.

45. The Perera resolutions initiated a new reform movement. Discussion between the Governor (Sir Graeme Thomson) and the Board of Ministers ultimately led to a formal statement by the Governor on 17th February, 1933, that while in his opinion it was premature to make any fundamental changes in the Constitution, he was prepared to examine some specific points, such as the method of election of Ministers, the re-allocation of the subjects and functions of the Executive Committees and certain proposals in regard to the Public Services Commission, the creation of which had been recommended in the Donoughmore Report and accepted. On 21st April, 1933, the Hon. Sir Baron Jayatilaka replied on behalf of the Board of Ministers. He expressed their keen sense of disappointment at the nature and scope of the proposed amendments. The Board of Ministers, he asserted, could not agree that such minor changes would solve " the grave difficulties experienced in the working of the present Constitution." Amendments should be real and " directed to remove the main obstacles to responsible government in the country." Nothing else would satisfy " the legitimate aspirations and demands of the State Council or the people."

46. The tone of this communication clearly indicates a sharp divergence of opinion between the Governor and the Board of Ministers on the question of the reform of the Constitution. The Board now submitted their own proposals, together with a commentary on the working of the Constitution during the two years it had been in operation. The scheme put forward was, they considered, " vital and urgently necessary for the purpose of ensuring its successful working." In the forefront the Board placed a demand for a " homogeneous Ministry wholly responsible to the Legislature," by which was meant the removal of the Officers of State and the substitution for them of Ministers with Executive Committees. This would put an end to the diarchy to which reference has already been made. It was suggested that the method of electing Ministers by the Executive Committees should be abolished. The Chief Minister, the Board considered, should be elected by the whole Council and the other Ministers should be nominated by him, after which Committees would then be assigned to them. The reconstitution of the Public Services Commission and the curtailment of the special powers of the Governor were also demanded.

47. There are some significant features in this reform programme. It represents a stage in the movement towards a responsible Ministry; homogeneity was to be obtained by the removal of the Officers of State, and the leadership of the Chief Minister was to be strengthened by the provision that he should

nominate his colleagues. The Executive Committees, however, remained unchallenged, partly because the vote in the State Council on the seventh Perera resolution had precluded the possibility of a direct attack, but also for the more important reason that two Ministers belonging to minority communities wished to retain the Executive Committees and the right of those Committees to elect Chairmen who would form the Board of Ministers. They regarded the existing arrangements as the only available means by which members representing minority communities could hope to be elected to ministerial office. One Minister also reserved the right to submit a memorandum on the necessity of instituting a Second Chamber, if the Governor's powers were curtailed.

48. The points in the Board of Ministers' memorandum were discussed in an interview with the Governor on 19th June, 1933. The Ministers agreed to submit a supplementary memorandum in elucidation of some of their proposals, and this the Governor received on 29th July. He had asked, among other things, what the relation was between the Perera resolutions and the proposals put forward by the Ministers. The reply was that the latter were not intended to supersede the former, but to amplify them and provide a framework into which they might be fitted. It is obvious, as the Governor had pointed out, that the Perera resolutions adopted by the State Council by no means covered the same ground as the Ministers' memorandum. The attempt made in the second memorandum to meet this point is not completely convincing. The Governor also drew attention to the fact that, notwithstanding the rejection by the State Council of the Perera resolution on the Executive Committees, the Ministers now proposed to make an important change in the method of appointing the Chairmen of the Committees. To this the Ministers replied that the trend of opinion both in the Council and in the country was in favour of modifying the Executive Committee system so as to make the working of the Constitution less cumbersome and more efficient. They had to admit, however, that there was not unanimity in the Board of Ministers itself on one of the specific amendments—the method of appointment of Ministers—they had put forward. At the conclusion of the interview the Governor stated that he was definitely opposed to any fundamental changes in the Constitution. It had worked without serious friction for the past two years, he thought, and changes would be premature.

49. The Ministers submitted their supplementary memorandum to the Governor on 29th July, 1933. In the meantime a Bill had been introduced (by Mr. G. C. S. Corea) and given its first reading on 24th July, to amend the Constitution mainly by giving effect to the Perera resolutions. The Governor considered that this had changed the situation, and he forwarded the Ministers' memoranda of 21st April and 29th July to the Secretary of State on 16th August, deferring his comments until the debate on the Bill was concluded.

50. The State Council, however, felt that little or no progress was being made, and on 16th September a motion was unanimously passed " that a deputation of five Members of the House be sent to the Secretary of State to urge for an immediate revision of the Constitution." On 21st September the Secretary of State cabled expressing his surprise that he should be asked to receive a deputation at such short notice. He said that none of the facts known to him would justify an immediate alteration of the present Constitution, nor had he received a considered statement from the Governor on " the various and to some extent conflicting proposals contained in the memoranda of the Board of Ministers and in the Bill before the State Council." He therefore could not agree to receive a deputation

until he had had an opportunity of considering a written statement of proposals and of the Governor's views on them. He added that in any event he was not prepared to entertain any proposals for the reduction or material modification of the powers conferred on the Governor and the Secretary of State by the Order in Council in relation to matters declared to be of paramount importance, or in regard to the maintenance of the efficiency of the Public Service.

51. In view of the Secretary of State's refusal to receive a deputation, the Ministers brought the proposals contained in their memorandum of 21st April, 1933, before the State Council, which accepted them on 15th November, the voting being thirty-four to fifteen. It is noteworthy that the representatives of the minorities, excepting one Tamil member who declined to vote, all voted against the proposals. The Bill introduced by Mr. Corea was then withdrawn by leave of the Council, which again unanimously resolved that the Secretary of State should be asked to receive a deputation.

52. The new Governor (Sir Edward Stubbs) submitted a report on this request on 21st February, 1934. He pointed out that, as a result of the debate in the State Council, the reform proposals were limited to a summary contained in one paragraph of the memorandum of 21st April, 1933, and did not cover the supporting detailed argument contained in that document and the further memorandum of 28th July, 1933. This limitation, he suggested, was dictated by the fact that unanimity could not be obtained in favour of the two memoranda as they stood. The proposed amendments of the Constitution which were put forward by the Board of Ministers as the result of two years of discussion were thus:—

(*a*) The replacement of the Officers of State by Ministers and Executive Committees of the Council.

(*b*) The strengthening of the position of the Board of Ministers by enabling them to initiate and carry out their financial policies.

(*c*) Alteration in the method of election of Ministers (on this point a minority held that there should be no change).

(*d*) The reconstitution of the Public Services Commission.

(*e*) The deletion of the provision that the prior sanction of the Governor should be obtained in the case of Bills, motions, resolutions or votes affecting officers in the Public Service.

(*f*) The curtailment of the special powers of the Governor.

On the ground that the Board of Ministers were not unanimous in favour of the proposals—and by inference they were still more divided on the means of implementing them—and that the State Council had by its votes shown that all the minority members (except one, who declined to vote) were opposed to them, Sir Edward Stubbs advised the Secretary of State to adhere to his former decision and refuse to receive a deputation. The Governor was himself convinced that communal antagonism had been accentuated since the introduction of the Donoughmore Constitution, and consequently did not consider the time opportune for any amendment of the Constitution in the direction of full responsible government.

53. The Board of Ministers received the second refusal " with the utmost regret and disappointment ". They submitted, in a letter to the Governor, dated 31st July, 1934, that the notification of the State Council's acceptance of the six proposals enumerated above, fulfilled the condition that a written statement should be forwarded to the Secretary of State before an interview

could be arranged. The Donoughmore Constitution, the Board continued to insist, was in the nature of an experiment, and the six proposals drew attention to the serious defects which had been revealed in its working. The claim to be heard on a matter of such vital importance, they submitted, was a very proper one to make. The time was also appropriate, for the present State Council had entered upon its last year and it was desirable that the whole position should be reviewed before the General Election.

54. It is interesting to notice that in reiterating their criticism of the Constitution, the Board of Ministers—or rather the majority, for the two members of minority communities again expressed their dissent—had moved somewhat from the position defined in the six proposals. They now stated definitely that in their opinion the only solution of the problem of the Executive was the election of a Chief Minister by the State Council or his appointment by the Governor. He should then assign portfolios to his colleagues, the ministerial committees becoming merely advisory. It would follow that the attempt to combine executive and legislative functions in the State Council would be abandoned. On this last issue the Governor was in substantial agreement with the Board of Ministers. He considered that the defects of the Committee system were real and inherent, and that it was a definite hindrance to efficient government and wholly unsuited to the country. The difficulty was that the minorities regarded it, faulty as it was, as some kind of safeguard to their interests, and a substitute would have to be found if this safeguard were removed. The Governor tentatively advanced the suggestion of a Second Chamber; but the whole question ought, he considered, to be referred to another Special Commission.

55. The first State Council entered upon its final year without having gained any practical result from the agitation for reform of the Constitution. The Governor was opposed to the reopening of the question, and the Secretary of State, as we have mentioned already, had specifically said that he was unwilling to entertain any proposals for the reduction or material modification of the Governor's powers. Moreover, the fact that Sir Baron Jayatilaka, in advising the State Council to press for an interview with the Secretary of State, had not revealed his attitude on this question was not calculated to inspire confidence. Most significant of all, however, was the attitude of the minority communities. They had become seriously apprehensive, and on 8th June, 1935, the Tamils (both Ceylon and Indian) and the Muslims sent a joint statement to the Secretary of State in which they set out their case in considerable detail. They declared that they had expressed their opposition to the Donoughmore Scheme from the beginning and had viewed it with growing alarm since it had been put into operation. It was a complete and abrupt departure from the principles which had been followed from 1833 to 1923. The majority community had been placed in power as an inevitable result of the abolition of communal and the adoption of territorial representation, and its persistent efforts to amend the Constitution could only be regarded as designed to complete its domination. The Sinhalese leaders were seeking to achieve this end by the limitation of the Governor's powers, the removal of the Officers of State, and amendment of the Committee system. The minorities asked, therefore, that representation in the State Council should be so arranged that the majority community could not outvote the other communities taken together. The Committee system, they conceded, had its defects; but if Cabinet Government were to take its place, the absence of political parties would require a composite cabinet containing minority representatives. This was particularly necessary because no provision had been made, as had been suggested in the case of the Provincial Legislatures in India, for a bicameral Legislature.

CHAPTER IV

THE DONOUGHMORE CONSTITUTION: FROM THE 1936 ELECTION TO THE 1943 DECLARATION

56. The elections to the new State Council were completed by 10th March, 1936. Although there were changes in personnel the representation of the communities remained practically the same, and thirty-nine Sinhalese (thirty-one Low Country and eight Kandyan), eight Ceylon Tamils, two Indians and one European were elected. The Governor recommended for the eight nominated seats four Europeans, two Muslims, one Indian and one Burgher. On 19th March, the third day of the opening session, the Executive Committees proceeded to the election of their Chairmen, these constituting the new Board of Ministers. It had been so arranged that all seven were Sinhalese.

57. The so-called Pan-Sinhalese Ministry has been much discussed ever since. We need not inquire what various reasons had led the majority community to take the steps necessary to exclude all representatives of the minorities from the Board of Ministers. Sir Baron Jayatilaka, who was re-elected Leader, later revealed two motives which had influenced the decision. Neither is wholly convincing. He told the Governor that this course was deliberately adopted because the minority members in the Board of Ministers had consistently opposed an alteration in the method of selecting Ministers. They felt that under the existing arrangement they had some chance of getting one or more of their number elected. It was decided, therefore, to give them a practical demonstration of the fact that they had no better chance of getting elected under the existing method than under some modification of it. That what the majority had now done had always been theoretically possible must have been common knowledge; but whether it was wise to do it is extremely doubtful. The point needed no practical proof. To show that members of the minorities could be excluded from the Chairmanship of Committees, and therefore from the Board of Ministers, was merely to make clear to them that they had to seek some other means of safeguarding their position. Nor could the demonstration be limited to that. The action of the majority could be represented as indicating a policy on their part of using their power to the detriment of the minorities. To provide the minorities with this argument showed a singular lack of statesmanship.

58. If Sir Baron Jayatilaka's first argument was ill-advised, his second was disingenuous. He claimed that since unanimity had been reached on the Board of Ministers, the Secretary of State's principal objection to the reopening of the question of the amendment of the Constitution had now been removed. Obviously, however, the Board's unanimity had not changed the situation, except for the worse. In requiring unanimity, the Secretary of State had clearly intended to convey that he was not prepared to consider proposals for constitutional reform unless they were supported by the minority members of the Board as well as by the Sinhalese. To eliminate the minority members not merely failed to satisfy this condition; it gave strong grounds for the belief that they had been excluded precisely because they could not be induced to accept the majority proposals. Moreover, as a result of the creation of the Pan-Sinhalese Ministry, the minorities had grown still more alarmed, and it had become more difficult than ever to reach a measure of agreement on constitutional reform in the State Council and in the country as a whole.

59. After the delays caused by the preparation for and conduct of the General Election, the new Board of Ministers resumed consideration of the

amendment of the Constitution. The Board were ready with their new proposals on 19th March, 1937, when they submitted a long memorandum to the Governor. It covered much the same ground as formerly with respect to the powers of the Governor and the functions of the Officers of State. The criticism of the Executive Committee system, however, was much more outspoken. It was said to deprive the Board of Ministers of any real initiative, to make it impossible to fix responsibility for action anywhere and to cause endless conflicts and delays in the administration. The system had indeed become so unworkable that the Ministers had decided that the Committees had better be replaced by the ordinary Cabinet form of Government. Either the Governor should call upon the Member of the State Council who could command the support of a majority to form a Government, or a Chief Minister might be elected by the whole State Council and should then choose his Cabinet. It was also suggested that the Minister might have the assistance of Deputy Ministers.

60. The memorandum signed by the seven Ministers was duly published, and became the basis for further discussion. In his comments to the Secretary of State, the Governor expressed his view that there could be no question for many years of reducing the Governor's powers; in fact he thought they needed strengthening. He was also of opinion that the Officers of State should be retained. He considered that an independent Public Services Commission was impossible because of the lack of suitable persons to be members of it. The method of selecting Ministers, he thought, should be amended, but he was not prepared to say how. His conclusion was, however, that the Donoughmore Constitution " must now be regarded as a proved failure " and he recommended the appointment of a new Commission to devise a more satisfactory form of Government.

61. The general condemnation of the Executive Committee system naturally raised the question of some form of Cabinet Government as an alternative. The Board of Ministers had agreed on the " ordinary form " without going into details. They had done so without consulting the Members of the State Council. There, two difficulties could be anticipated. In the first place, some members of the majority community would not willingly surrender the part they were able to play in administration through the machinery of the Executive Committees. In the second, the representatives of the minorities, although excluded from the Chairmanship of Committees, still retained some influence as members and would be averse to losing it. They could be expected to welcome a Cabinet system only if they had an assurance that it would provide some places for them. The formation of the Pan-Sinhalese Ministry did not appear to hold out any prospect of that in the future.

62. The discussion of reforms entered upon a new phase in November, 1937, when the Secretary of State (Mr. Ormsby Gore, now Lord Harlech) addressed an important despatch to the new Governor (Sir Andrew Caldecott). In it he said that he had for some time been giving serious consideration to the desirability of effecting some amendments in the Constitution; and he instructed the Governor carefully to examine the situation and, when he had acquainted himself with the views of all sections of opinion in the Island and had had time to form conclusions, to submit to him any recommendations he might wish to make. The despatch enumerated the main subjects at issue, namely, the special powers of the Governor, the method of selecting Ministers, the relations between the Ministers, the Executive Committees and the State Council, the representation of the minority communities, and the franchise. With regard to the special powers of the Governor, the Secre-

tary of State gave strong expression to his own view; he not only reasserted the opinion of his predecessors that the time was not opportune for any relaxation of the Governor's powers, but he considered that they needed to be more clearly defined. Recent events (to which specific reference need not be made here) had convinced him that the Governor's powers should be stated in terms which admitted of no dispute. The amendment of the Ceylon (State Council) Order in Council, 1931, which he proposed to this end, was much resented by the Board of Ministers and to some extent created an unfavourable atmosphere for the task which the Governor had been asked to undertake.

63. After receiving a series of deputations, and considering a number of memoranda and memorials, the Governor sent his recommendations to the Secretary of State in a despatch dated 13th June, 1938, which was acknowledged on 10th November, 1938, and presented to Parliament in December.*

64. Sir Andrew Caldecott's " Reforms Despatch " marks an important stage in the discussion of the reform of the Constitution. Hitherto memoranda had been prepared by the Board of Ministers and representatives of the chief minorities and had been commented upon by successive Governors. The Reforms Despatch is of a different nature. It was based on an independent sifting of the evidence, and the conclusions at which the Governor had arrived were forcibly, even provocatively, stated. Some critics characterised the Despatch as the findings of a one-man Commission, a description which its author repudiated. It was written with a vigour and directness unusual in official documents, and while on close examination some inconsistency may be detected here and there, there is no ambiguity.

65. Sir Andrew Caldecott agreed with the Secretary of State that the time was not opportune for any relaxation of the Governor's special powers. So long as they were retained he considered a Second Chamber unnecessary; but he thought a bi-cameral government might be part of the future constitutional development of the Island. With regard to representation, he recommended that elected seats should continue to be filled on a territorial franchise, though he suggested that the electoral areas might be re-drawn so as to afford a chance for the return of more members of the minority communities. Ten additional seats would, he thought, be sufficient for this purpose. Delimitation of constituencies to this end was in his opinion a very different thing from representation of communities on a mathematical formula. He consequently rejected a " Fifty-fifty " demand, which asked that half the seats should be assigned to the Sinhalese and half to the minorities, or any other scheme which involved " fractional representation on a race basis." But an exception would have to be made for the European and Burgher communities. He recommended the retention of the principle of nomination by the Governor of four seats for Europeans and two for Burghers, possibly with two further nominated seats in reserve. On the general ground that it was not practicable to withdraw privileges once they had been granted, the Governor rejected all proposals to restrict the franchise or to re-impose any literacy or property qualification. He applied the same principle to the proposals to alter the regulations which governed the Indian franchise, though he was not satisfied that they had been fully observed and therefore considered that they needed attention.

66. The case against the Executive Committee system seemed to him overwhelming. The Executive Committees made administration cumbrous

* Correspondence relating to the Constitution of Ceylon. Presented by the Secretary of State for the Colonies to Parliament by Command of His Majesty, December, 1938. (Cmd. 5910.) The " Reforms Despatch " is also printed as Ceylon Sessional Paper XXVIII of 1938.

and dilatory, they prevented any co-ordinated effort and hindered the emergence of any real ministerial policy or responsibility. These were defects so inherent in the system that it could not be efficiently operated. The Governor therefore recommended the abolition of the Executive Committees. He was not convinced that they provided any safeguard for the minorities, the only argument which had been strongly urged in favour of their retention. The desire to abolish them had led to the formation of the Pan-Sinhalese Ministry and if they were retained he foresaw a succession of such Ministries. He had gathered from the Sinhalese leaders that they regretted the course they had taken, but they regarded it as forced upon them by circumstances. In his opinion, therefore, the functions of the Executive Committees and the Board of Ministers should be extended to a Cabinet of the normal type. This would naturally involve the removal of the Officers of State, for they could not remain a constant factor in successive Ministries. While it had to be admitted that the emergence of major political parties might be a slow process, conditions should be established which would make that evolution possible. The Governor should on his own initiative send for the member of the State Council most likely in his opinion to command confidence as Chief Minister, and invite him to suggest the names of those who should hold the remaining portfolios.

67. The Governor had been so much impressed by the fact that the Sinhalese leaders had in conversation deplored the necessity which, as they alleged, had drawn them to form a Pan-Sinhalese Ministry, that he was convinced that under a Cabinet system places would be found for representatives of the minorities. He favoured, therefore, the incorporation in the Ceylon Constitution of a clause similar to that in the Indian Instructions, which provided that the Governor should " use his best endeavours . . . to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature, those persons (including so far as is practicable members of important minority communities) who will best be in a position . . . to command the confidence of the Legislature."

68. The changes contemplated would on the one hand place greater individual and collective responsibility on Ministers and, on the other, relieve the State Councillors from their work on the Executive Committees. The Governor therefore recommended the appointment of Deputy Ministers and suggested that the extra expense involved in paying them (and the expenses of the proposed ten additional Members of the State Council already mentioned) might be met by reducing the existing rate of allowance to Members of the State Council. He also wished to remove the scandal caused by the frequent seizure for debt of Members' allowances by providing that no Member should occupy his seat while his allowance was under seizure by the Court.

69. The removal of the Officers of State from the Board of Ministers raised issues of some complexity to which the Governor addressed himself. To some extent, he thought, the functions of the Officers of State could be distributed among existing Ministries, but by no means entirely so. Some of the duties of the Chief Secretary, for instance, could be allocated to the Ministry of Labour, Industry and Commerce, and others to the Ministry of Home Affairs; but all important communications to other Governments—in fact the whole range of External Affairs—necessarily came directly to the notice of the Governor. The suggestion was therefore that the Chief Secretary, when deprived of his Ministerial standing, should become Principal Secretary to the Governor, and should act for the Governor when the latter was ill or on leave. He should also be Chairman of the Public Services Commission. Similarly, while some functions of the Legal Secretary might be transferred to the Ministry of Home Affairs, that officer should be retained

as Legal Adviser because independent advice on constitutional questions would be necessary, and the Governor would require advice on the exercise of the Royal clemency and as to the assent to legislation. The Legal Adviser would also serve on the Public Services Commission and be President of the Judicial Appointments Board. Many functions performed by the Financial Secretary, particularly with regard to establishments, could be transferred to the Public Services Commission; others could be allotted to a new Minister for Finance. There would, however be need of an independent Financial Adviser, particularly in regard to the supervision of currency, banks, etc., where expert guidance was essential. Representations had been made by Ministers that a departure should be made in this instance from the general principle that the successors to the Officers of State should be purely advisory. It was recommended that the Financial Secretary should become the Financial Secretary and Adviser and that he should exercise an executive and responsible control over the Treasury under the Finance Minister. He would thus be subject to ministerial direction in one capacity and independent of it in another; for he, like the Legal Adviser, could be consulted for technical advice both by the Governor and the Cabinet. Complete responsibility for all measures introduced by them would rest with the Cabinet.

70. The suggestions made above, it will be noticed, have a direct bearing on the composition of the Public Services Commission, which had so often been a subject of criticism. The Governor's recommendation amounted to the retention of the existing membership—the three Officers of State in their new non-Ministerial guise, with the addition of not more than three Unofficals nominated by the Governor and chosen from among ex-judges of the Supreme Court or others of similar standing. All routine postings, etc., should be delegated by the Governor to the Chairman of the Commission; the only appointments or transfers to be referred to the Cabinet to be those of the Head, or Deputy Head, of a Department or of a Government Agency.

71. In submitting his recommendations, the Governor had no illusion that he had resolved the difficulties which beset the working of the Constitution. His guiding principle was that self-government in internal affairs involved responsibility, and on his analysis of the existing arrangements it was impossible to state precisely where it resided. Most of his suggestions, as he admitted, were dictated by the requirements of a Cabinet system. If these could not be fulfilled, he had no remedy to offer. He was also aware that certain other aspects of his scheme would be attacked. The Sinhalese majority would strongly resent the proposed complete retention of the Governor's powers, for these had been consistently criticised and had recently been specially challenged. The minorities would resent his unqualified denunciation of communalism and would regard the addition of a maximum of ten additional seats in the State Council as quite inadequate to mitigate the predominance of the majority community.

72. The Reforms Despatch was discussed by the State Council at great length and in minute detail. There were in all one general and twenty-one detailed motions moved on the subject. The result was to expose difficulties rather than any basis for possible agreement. The Governor had to confess that his proposals had not received " the general consent of all important interests in Ceylon " which the Secretary of State had defined as the desirable objective of the enquiry. The basic difficulty, as always, had been the question of minority representation. Arguments, whether they were ostensibly about the Governor's powers, the respective advantages and disadvantages of the Executive Committee system and of Cabinet government, or any other issue, really turned on the effect a proposal might be calculated to have on the relative position of the communities.

73. The critics of the Reforms Despatch could point out that the Governor's professed intention to interfere as little as possible with the Donoughmore Constitution was inconsistent with his proposal that the Executive Committee system should be abolished. That was an essential part of the scheme which had been deliberately devised to afford protection for the minorities. Although it was impossible to prevent the Sinhalese majority from so constituting the Executive Committees that they would have a homogeneous Board of Ministers, the fact that there were minority representatives on each Executive Committee ensured that the minorities would have knowledge of the matters under discussion and so would have an opportunity of stating any objections they might have. They could not fail to have some influence on the decisions taken, and they might exercise a certain control over administrative action.

74. The advocacy of the Cabinet system could also be represented as an attempt to throw off the curb on the unlimited power of the majority which the Executive Committee system provided. Granted that the system was unwieldy in some respects, it was not unworkable had there been a desire to work it. Persistent efforts had been made to exhibit its difficulties. Since it was possible to form a homogeneous Board of Ministers which had control of finance, co-ordination could have been achieved. But the majority community wished to get power into its own hands and found the Executive Committee system an obstacle to its policy. The Governor, it is true, contemplated a Coalition Cabinet, and here again he was accused of inconsistency. If the Board of Ministers found it necessary to establish homogeneity, why should it be assumed that a composite Cabinet would be workable? Would not the members of the minorities in it often find themselves either in conflict with their colleagues, or in danger of losing the confidence of their constituents? Cabinet instability might lead to eventual Cabinet dictatorship with the minorities excluded from office and deprived of all safeguards.

75. These contentions rested on the assumption that the principle of communalism was so strong that there was no prospect of the emergency of political parties. The elimination of communalism from political life under the Donoughmore Constitution was purely formal; to call the representation territorial was merely to disguise the fact that it was fundamentally communal. In his Reforms Despatch the Governor had said that any concession to the principle of communalism would perpetuate sectionalism; but he had suggested that the position might be eased by affording a chance of more seats for minority candidates. This approach was not unwelcome to the minorities. They did not demand communal electorates as such but fuller representation, and this might well be provided by a redistribution of territorial electorates. Here there seemed to be a ground for compromise. The Secretary of State (Mr. Malcolm MacDonald) in a despatch of 26th January, 1940, suggested to the Governor that the possibility of a conference between the parties might be explored.

76. The suggestion of ten additional seats was, however, not acceptable to the minorities. It had been mentioned by the Governor as the number which he anticipated a Re-delimitation Commission might find sufficient. He had not intended that it should be taken as a maximum. The Board of Ministers, however, declared that they had read his recommendation in that sense, and that they had supported the motion based upon it with that limit in mind. In doing so, they had incurred criticism for going so far, and to re-open the question would be to run the risk of forfeiting the confidence of their supporters. The idea of a conference between the leading interests, which had been suggested by the Secretary of State, had therefore to be abandoned.

77. Failure to agree on the question of increased representation for the minorities was fatal to the scheme Sir Andrew Caldecott had proposed; and we have laid particular stress on this issue, because it was by far the most important in the debates on the Reforms Despatch. Incidentally, however, it is worth noticing that there were other features of the Governor's recommendations which did not commend themselves to the State Council. The method suggested for securing minority representation in the Cabinet, and the proposal that there should be Deputy Ministers, were both rejected, and practically the whole of the Governor's suggestions for dealing with the problems arising out of the removal of the Officers of State and the reorganisation of the Public Services Commission met with strenuous opposition. The proposal that a Principal Secretary to the Governor should be substituted for the Chief Secretary was heavily defeated and the suggested provision in the Constitution for Advisers to the Governor was not accepted.

78. The Reforms Despatch and the prolonged debate on it had only served to demonstrate the difficulties which beset the problem of constitutional reform. The outbreak of the European War in September, 1939, introduced new complications. It immediately raised the question whether the life of the State Council should be extended and, if so, for how long. The General Election was due to be held not later than January, 1941, and the Board of Ministers was strongly of opinion that it should not take place under the existing Constitution. As efforts to reach agreement about reform had failed, the alternatives were either to postpone the General Election, or to impose reforms in the interim by Order in Council. The Secretary of State was not prepared to take the latter course. It was natural that there should be a certain divergence of opinion between the British Government and that of Ceylon on the question of urgency. The war involved incalculable commitments in Europe, but it was as yet remote from the Far East. In Ceylon the agitation for constitutional reform had been dragging on for years and recently the whole subject had been exhaustively examined, and it did not therefore seem unreasonable to demand a pronouncement from His Majesty's Government. The Governor reported growing unrest and stated his conviction that it was necessary to postpone the General Election and in the interval to appoint a Commission to advise the Secretary of State on constitutional reform. He felt that the postponement should be for a definite term and not for the duration of the war. In the end, a two years' postponement of the General Election was decided upon and on 15th June, 1940, the following announcement was made public:—

> "In view of the general dissatisfaction with the present Constitution and of the questions that have arisen regarding cognate problems of franchise and delimitation of constituencies, an Order in Council will be enacted to enable the postponement for two years of the election which is due not later than next January under Article 19. The postponement is necessary in present circumstances if careful decisions are to be reached on these questions before new elections are held."

79. Clearly the intention was to arrive at decisions on constitutional reform within the period of the two years' extension of the life of the State Council. But the war in Europe entered upon a new and more critical phase with the collapse of France, and the Secretary of State came to the conclusion that active consideration of constitutional reform was impracticable until after the war. This would probably involve a further postponement of the General Election. The Governor was greatly concerned about the effect of an arrangement on these lines. He was involved in acute controversy with the Ministers on the question of the Indian franchise and did not wish to raise further difficulties. If the life of the State Council was further extended, the

Ministers themselves would have to face criticism on the ground that they were clinging to office. Moreover, the demand for constitutional reform was taking a new turn; it was no longer a question of amendment of the Donoughmore Constitution, but of the granting of Dominion status, and while it might appear to His Majesty's Government that, in all the circumstances of the moment, the consideration of constitutional issues in Ceylon could well be deferred, it was difficult to meet the allegation that advantage was being taken of the war situation to justify further delay. After a careful assessment of the whole situation, the Secretary of State instructed the Governor to communicate the following assurance of His Majesty's Government to the Board of Ministers:—

> "His Majesty's Government have had under further consideration the question of constitutional reform in Ceylon. The urgency and importance of reform of the Constitution are fully recognised by His Majesty's Government; but before taking decisions upon the present proposals for reform, concerning which there has been so little unanimity but which are of such importance to the well-being of Ceylon, His Majesty's Government would desire that the position should be further examined and made the subject of further consultation by means of a Commission or Conference. The Board of Ministers will appreciate that this cannot be arranged under war conditions, but the matter will be taken up with the least possible delay after the war."

This statement was communicated to the Board of Ministers on 1st September, 1941.

80. The Board of Ministers expressed their strong dissatisfaction with this statement. They pointed out that the delay contemplated was for an indefinite period and might be protracted. The defects in the existing Constitution had become obvious and its further operation would be detrimental to the best interests of the country. The life of the State Council had been extended for two years for the specific purpose of dealing with the question of reform within that time. Furthermore, the Board also opposed the appointment of a Commission or the holding of a Conference, for the Governor had recently examined the subject exhaustively and his recommendations had been carefully considered by the State Council. No new material was likely to be forthcoming and an enquiry would merely serve to create ill-will among the various sections of the community. The Secretary of State considered these representations and decided that the statement of 1st September, 1941, should be placed before the State Council on 28th October, 1941, without any emendation except the omission of the reference to the Board of Ministers in the final sentence. The Board thereupon formally reiterated their dissatisfaction with it on the grounds already summarised.

81. It will be noticed that no reference was made in the statement to the possibility that the General Election might have to be further postponed. The fact, however, that the discussion of constitutional reform was to be deferred until after the war meant that the original ground on which the two years' extension of the life of the State Council had been justified no longer held good. The alternative of a General Election under the existing Constitution or a further postponement might well have proved embarrassing to the Board of Ministers had not the entry of Japan into the war in December, 1941, completely changed the situation. On 10th February, 1942, the Governor was authorised by the Secretary of State to send a message to the State Council, announcing a further postponement. This provoked a motion of non-confidence in the Board of Ministers, but it was defeated by 36 votes to 6.

82. The prolongation of the life of the State Council and the proposed deferment of the discussion of the constitutional problem until after the war

by no means suspended the agitation for reform. It was in fact stimulated by events and given a more definite direction. The mission of Sir Stafford Cripps to India led the Board of Ministers to ask whether he might visit Ceylon, or at least receive a deputation in India on the Island's request for a declaration of Dominion Status after the war. The State Council had on 26th March, 1942, passed a resolution in favour of this, the only dissentients being the European and Burgher Nominated Members. The Secretary of State replied that it was impossible for Sir Stafford Cripps to visit Ceylon or to deal with Ceylon problems, but that His Majesty's Government wished to renew their pledge that when victory was won the question of constitutional reform would immediately be re-examined.

83. Nevertheless, strong representations continued to be put forward that, to maintain the war effort in Ceylon and to counteract the influence of extremist elements, some comprehensive declaration of the intentions of His Majesty's Government in regard to constitutional reform ought to be made. The actual terms of the proposed statement were not ready for publication until 26th May, 1943, when the Governor was instructed to communicate them to the State Council. This detailed declaration forms the basis of all subsequent discussions and lays down the principles to which the proposed new Constitution should conform. It was designed to give greater precision to the Statement of 1st September, 1941, and to remove any doubts as regards the extent to which His Majesty's Government were prepared to meet Ceylonese aspirations. The Declaration* reads:—

"(1) The post-war re-examination of the reform of the Ceylon Constitution, to which His Majesty's Government stands pledged, will be directed towards the grant to Ceylon by Order of His Majesty in Council, of full responsible Government under the Crown in all matters of internal civil administration.

(2) His Majesty's Government will retain control of the provision, construction, maintenance, security, staffing, manning and use of such defences, equipment, establishments and communications as His Majesty's Government may deem necessary for the Naval, Military and Air security of the Commonwealth, including that of the Island, the cost thereof being shared between the two Governments in agreed proportions.

(3) Ceylon's relations with foreign countries and with other parts of the British Commonwealth of Nations will be subject to the control and direction of His Majesty's Government.

(4) The Governor will be vested with such powers as will enable him, if necessary, to enact any direction of His Majesty's Government in regard to matters within the scope of paragraphs 2 and 3 of this Declaration; and his assent to local measures upon these matters will be subject to reference to His Majesty's Government.

(5) The present classes of Reserved Bills in the Royal Instructions will be largely reduced under a new Constitution. Apart from measures affecting Defence and External Relations, it is intended that these shall be restricted to classes of Bills which:—

(*a*) relate to the Royal Prerogative, the rights and property of His Majesty's subjects not residing in the Island, and the trade and shipping of any part of the Commonwealth;

(*b*) have evoked serious opposition by any racial or religious community and which in the Governor's opinion are likely to involve oppression or unfairness to any community;

(*c*) relate to currency.

* Hansard, 26th May, 1943. Columns 1555–1557. Also printed in Ceylon Sessional Paper XVII of 1943.

(6) The limitations contained in the preceding paragraph will not be deemed to prevent the Governor from assenting in the King's name to any measure relating to, and conforming with, any trade agreements concluded with the approval of His Majesty's Government by Ceylon with other parts of the Commonwealth. It is the desire of His Majesty's Government that the Island's commercial relations should be settled by the conclusion of agreements, and His Majesty's Government will be pleased to assist in any negotiations with this object.

(7) The framing of a Constitution in accordance with the terms of this Declaration will require such examination of detail and such precision of definition as cannot be brought to bear so long as the whole of the energies of the Service and other Departments of His Majesty's Government must remain focussed on the successful prosecution of the war. His Majesty's Government will, however, once victory is achieved, proceed to examine by suitable Commission or Conference such detailed proposals as the Ministers may in the meantime have been able to formulate in the way of a complete constitutional scheme, subject to the clear understanding that acceptance by His Majesty's Government of any proposals will depend:—

First, upon His Majesty's Government being satisfied that they are in full compliance with the preceding portions of this Statement;

Secondly, upon their subsequent approval by three-quarters of all Members of the State Council of Ceylon, excluding the Officers of State and the Speaker or other presiding Officer.

(8) In their consideration of the problem, His Majesty's Government have very fully appreciated and valued the contribution which Ceylon has made and is making to the war effort of the British Commonwealth and the United Nations, and the co-operation which, under the leadership of the Board of Ministers and the State Council, has made this contribution effective."

CHAPTER V.

THE DONOUGHMORE CONSTITUTION: DEVELOPMENTS SINCE THE 1943 DECLARATION

84. The Declaration by His Majesty's Government of May, 1943, should of course be read in conjunction with the 1941 Statement to which it was designed to give greater precision. It certainly marked a great step forward, for while it did not make any specific allusion to Dominion status, it defined the objective of constitutional reform as the grant of full responsible government in all matters of internal civil administration. The invitation to the Ministers to formulate their proposals to this end meant that they could comprehensively review the results of the long discussion of the inadequacies of the Donoughmore Constitution and draw up a scheme which in their opinion would work more successfully. This scheme was to fall within the terms of the Declaration and commend itself to a three-fourths majority of the State Council.

85. These conditions raised two questions. Was the Declaration sufficiently explicit to enable the Ministers to draft a scheme? How was the requisite three-fourths majority to be ensured? In a statement made on behalf of the Ministers on 8th June, 1943, the Leader of the State Council (The Hon. Mr. D. S. Senanayake), while acknowledging that the terms of the Declaration represented substantial gains and expressing the Ministers' willingness to

prepare a draft Constitution, asked that a number of points should be further elucidated. He presented a series of interpretations on which the comments of His Majesty's Government were invited. The Secretary of State replied by drawing attention to paragraph 7 of the Declaration and regretting that he could not enter into details. The Ministers insisted in a communication of 6th July that they could not proceed with drafting a scheme until they knew whether their interpretations were acceptable. The Secretary of State pointed out that the Declaration was confined to a statement of broad principles and that to enter upon a discussion of details would be inappropriate at that stage; but he found nothing in the interpretations " essentially irreconcilable " with the conditions laid down in the Declaration. This reply was considered to be sufficiently satisfactory and the Leader of the House announced on 15th July, 1943, that the Ministers proposed to proceed with the drafting of a Constitution.

86. The Ministers recognised that the condition that the draft Constitution should receive the approval of three-fourths of the Members of the State Council (excluding the Officers of State and the Speaker) was a difficult one. The 1941 Statement had drawn attention to the lack of unanimity on reform proposals; in fact, this had proved the real obstacle at every stage. Nevertheless, the Ministers expressed their confidence that the State Council possessed " the larger patriotism that transcends sectional difficulties," a phrase which seemed to suggest that they would take steps to ascertain whether their proposals were likely to receive general approval.

87. The Ministers decided that their Scheme should take the form of an Order in Council. This had the advantage of requiring precision of statement and comprehensiveness. The formidable task of drafting it was completed by the beginning of February, 1944, and copies were forwarded to the Secretary of State. While it was being compiled by the Ministers, misgivings about its possible contents were expressed on behalf of the Government of India and of minority communities in Ceylon. The former was concerned about the status of Indians and the latter complained that they had not been consulted. The procedure adopted by the Ministers, they alleged, had aroused resentment among minority communities. They pointed out that there were vital differences of opinion on the quantum of representation of the different communities, the status of Indians and Europeans resident in Ceylon, the system of Executive Committees and the establishment of a Second Chamber. To these representations the Secretary of State could only reply that he could not intervene, for the Ministers must use their own discretion about the procedure they adopted in preparing their draft.

88. The Declaration of 1943 had made it clear that His Majesty's Government would examine any detailed proposals submitted by the Ministers by means of a suitable Commission or Conference once victory was achieved. The Ministers, however, now began to press for an immediate consideration of their scheme. They submitted that urgent local circumstances made an early decision a vital necessity. Unless the life of the State Council was again extended, a General Election would have to take place early in 1945 and a further extension would not be acceptable to public opinion unless the announcement of it was accompanied by an assurance that the General Election would be held under the new Constitution and within a reasonable time. This was in fact a request to vary the terms of the 1943 Declaration. The Secretary of State could hardly be expected to agree to do so unless he was convinced that serious difficulties might arise, either if events were allowed to take their course and a General Election was held early in 1945, or if the life of the State Council was extended without any reference being made to the impending promulgation of a new Constitution.

89. After a careful assessment of the situation, the Secretary of State made a statement in the House of Commons on 5th July, 1944. Its terms are important because they led to an unfortunate difference of opinion with the Board of Ministers. It ran :—

" In their Declaration of 1943 on the subject of the reform of the Ceylon Constitution, His Majesty's Government invited the Ceylon Ministers to submit proposals for a new Constitution, and promised that once victory was achieved such detailed proposals as the Ministers might in the meantime have been able to formulate in the way of a complete constitutional scheme would be examined by a Commission or Conference. Ministers have now submitted their draft scheme with an urgent request that arrangements may be made for its examination at an earlier date than that contemplated in the Declaration.

His Majesty's Government have accordingly decided to appoint a Commission to examine the Ministers' proposals, which would visit Ceylon for this purpose towards the end of the present year. The adoption of this course does not entail in other respects any modification of the Declaration of His Majesty's Government in regard to the eventual approval by His Majesty's Government of any new Constitution. It is the intention of His Majesty's Government that the appointment of the Commission should provide full opportunity for consultation to take place with the various interests, including the minority communities, concerned with the subject of constitutional reform in Ceylon, and with the proposals which Ministers have formulated.

Further, in accordance with the object already declared of avoiding a General Election in Ceylon during the war, with consequent dislocation of Ceylon's war effort, the Ceylon (State Council) Order in Council, 1931, will be amended so as to prolong the life of the existing State Council for a further period of two years."*

90. The Ministers took strong objection to the statement that the Commission should consult " the various interests, including the minority communities, concerned with the subject of constitutional reform in Ceylon and with the proposals which Ministers have formulated." They contended that this amounted to a fundamental departure from the terms of the Declaration of 1943. In the interpretation of the Declaration which they had submitted to the Secretary of State, and in which he had found nothing " essentially irreconcilable " with its terms, two conditions only had to be fulfilled, namely, the Ministers' proposals were to be examined by a Commission to determine whether they were in accord with the Declaration and then presented to the State Council where a majority of three-fourths was required for their adoption. The Ministers held that the function of the Commission should be strictly limited to an examination of the Ministers' Scheme and that the minorities would be sufficiently protected by the stipulation of a three-fourths majority when it came to be discussed in the State Council.

91. The Ministers were aware that protests had been made against the secrecy with which they had prepared their scheme, and they knew that His Majesty's Government had from the beginning of the discussion of reform been much concerned about the lack of unanimity on the subject. A complete answer to the suggestion that the Commission should hear the submissions of the minority communities would have been that the Ministers had themselves already ascertained their views; but this they had failed to do, although such a course would clearly have been the best way of assuring the necessary support in the State Council. To enquiries we made in Ceylon why the

* Hansard, 5th July, 1944. Columns 1142–43.

Ministers proceeded as they did, those concerned to defend their attitude invariably replied that the Secretary of State had asked the Ministers, and the Ministers only, to prepare a constitutional scheme, and that he had given no directions as to consultation with the minorities, who were fully safeguarded by the stipulation as to the three-fourths majority. This explanation has only to be stated for its inadequacy to be obvious. There can in our view be no doubt that the Ministers deliberately avoided consultation with the minorities because they knew that the latter would not agree to go as far in the direction of Dominion status as the Ministers desired. Little progress can be made in public affairs by strict adherence to the letter of documents and complete neglect of the spirit of compromise.

92. As a result of the misunderstanding, the Ministers decided to withdraw their scheme. On 11th September it was, however, published with an Explanatory Memorandum as Sessional Paper XIV of 1944, and is printed in Appendix I to this Report. In withdrawing it, the Ministers stated that they had done so not because they would have had any hesitation in recommending it to the State Council, but because, in their opinion, His Majesty's Government had failed to carry out the undertaking given in the Declaration of 1943.

93. It is to be noted that, notwithstanding the circumstances in which the Ministers had formulated their scheme, they had failed to reach complete unanimity on all points, since the Hon. Mr. A. Mahadeva, a Ceylon Tamil who had joined the Board as Minister for Home Affairs late in 1942 and thus become its one minority member, recorded his disagreement with the proposals regarding representation.*

94. It was announced on 20th September, 1944, that His Majesty's Government had decided to appoint a Commission with the terms of reference set out in the first paragraph of this Report. A promise was given that the members of the Commission would arrive in Ceylon before the end of the year.

95. Although the Ministers' scheme was not technically before the Commission, it naturally provided a most valuable basis for discussion and was of great assistance in focussing attention on the salient features of constitutional reform. It is interesting to notice how it dealt with questions which had so long been under discussion. The much criticised Executive Committees and Board of Ministers were to be superseded by a Cabinet of ten Ministers, of whom one was to be the Prime Minister. He was to be appointed by the Governor (now to be Governor-General) and the other Ministers were to be appointed on his recommendation. Deputy Ministers, not to exceed the number of Ministers, might be appointed to assist them. The Legislature was to be unicameral and called the Council of State; but powers were taken to establish a Second Chamber to be called a Senate, if thought desirable, at some future time. The Ministers explained that this was a controversial issue and they doubted whether the proposal to establish a Second Chamber would secure the requisite three-fourths majority in the State Council. The provision made in the scheme would, they pointed out, enable the Council of State, when it wished, to establish a Senate by a bare majority.

96. The Legislature was to consist of approximately one hundred members, ninety-five of them to be elected on a territorial basis. This was a significant increase in membership. It will be recalled that the Donoughmore Commission had recommended the figure of eighty, sixty-five to be elected; but the Ceylon (State Council) Order in Council, 1931, had adopted sixty-one, fifty being elected. As recently as 1940 the Ministers had resisted a suggestion

* S.P. XIV, page 5, para. 10

that the membership of the State Council might be increased by an addition of more than ten elected members. They now of their own initiative proposed an increase of forty-five. Such an increase undoubtedly offered greater opportunity for the representation of the minority communities, and the principle of additional weightage for the minorities within a territorial system was recognised by combining the criteria of population and area in determining the electoral districts. Since the majority of Tamils and Muslims are in the less densely populated areas, this method was calculated to meet, at any rate in part, their demand for greater relative representation without accepting the principle of communal representation as such. The scheme also provided that the Governor-General, acting in his discretion, might appoint to the Council additional members not exceeding six in all, to represent any important interest he might consider insufficiently represented.

97. There is no reference in the Ministers' scheme to the question of the franchise. From this it may be inferred that they intended that there should be no change as far as those who possessed a domicile in Ceylon were concerned. The Indian franchise would be a matter for settlement if and when a basis was reached for re-opening the negotiations broken off in 1942 between the Governments of India and Ceylon on questions connected with immigration of Indians into Ceylon and their status, domicile, franchise, etc., there.*

98. The powers of the Governor-General were limited in matters of internal administration in accordance with the principles of responsible government, while he retained overriding powers with respect to the reserved subjects of External Affairs and Defence. The Officers of State disappeared and their functions were to be taken over by responsible Ministers. Appointments to the Public Services Commission, to a Judicial Services Commission to be constituted, to the post of Chief Justice and to the Supreme Court Bench were left in the hands of the Governor-General, acting in his discretion after consulting the Prime Minister, whose advice he was not, however, bound to take.

99. Such are the main provisions of the constitutional scheme prepared by the Ministers on the basis of their interpretation of the 1943 Declaration and withdrawn by them in August, 1944. As we have already explained in the concluding paragraphs of the Prologue to this Report, we have regarded this scheme, notwithstanding its withdrawal, as one of those to be considered during our inquiry; and in later chapters we shall subject it to the close examination which its importance deserves. It now remains to complete our survey of the working of the Donoughmore Constitution and the movement under it for further reform, by considering the progress made in social services since its introduction in 1931, the position of the minorities under it and the charges of discrimination against them in favour of the Sinhalese, and the special claims of the Kandyans. These questions we shall deal with in the next four chapters, after which we shall proceed to an examination of the various constitutional proposals put before us, including the Ministers' scheme, and to the formulation of our recommendations.

CHAPTER VI

SOCIAL PROGRESS UNDER THE DONOUGHMORE CONSTITUTION

100. Concentration of attention on the criticisms of the Donoughmore Constitution serves to reveal the phases through which the reform movement had passed in the last decade; it tends, however, almost completely to obscure the progress achieved, particularly in the sphere of social improvement, despite

* For details of these negotiations *see* Chapter XI below.

the shortcomings of the form of government. The Donoughmore Commissioners, it should be remembered, based their case for the extension of the franchise to all adults partly on their belief that it would stimulate the social and industrial legislation essential to a society passing through vital economic changes. They pointed out that there were serious gaps in the social structure owing to the absence of any poor law system, of up-to-date factory legislation, of provision for workmen's compensation, of control over sweated trades and of adequate facilities for primary education.

101. It is necessary, therefore, to inquire how far the hopes based on the grant of adult suffrage have been justified since 1931. The franchise in itself does not awaken a general social consciousness, particularly when it is given without previous agitation for it. But the fact that would-be representatives of the people have to seek popular support forces them to think of the grounds on which they can solicit such support. No doubt the Donoughmore Commissioners hoped that political programmes would be announced which would turn attention from communal to party politics. Their hopes, it is true, have not yet been realised. Nevertheless, it can be said that considerable advances in social legislation have been made, and these must be explained to a large extent by the response of the State Council to the needs of the people, whether consciously expressed or not.

102. Social legislation involves expense. In justice to the State Council it must be remembered that it came into office at a time of acute and world-wide economic depression. This had serious repercussions in Ceylon, for, dependent as it so largely is on the export of three agricultural products—tea, rubber and copra—the collapse of world markets inevitably involved much distress. Hardly had signs of recovery shown themselves when the failure of the South-West monsoon in 1934 brought new disaster. The shortage in the food crops meant famine over wide areas. This was followed by the most severe malaria epidemic in recent years, which lasted from the autumn of 1934 to the summer of 1935, and relief measures had to be undertaken on an extensive scale. For these reasons there was an urgent call for extraordinary expenditure at a time when the revenue showed a considerable shrinkage. In 1935 the cost of various forms of relief amounted to more than six million rupees and, despite the recent imposition of an income tax, there were deficits in the National Revenue.

103. With a tax system which had been built up mainly on indirect taxation, it was difficult, even in favourable circumstances, to expand the revenue to meet new charges. It encouraged the practice of adjusting expenditure to taxation rather than of budgeting for development. New taxes always arouse opposition, and allegations that the limit of taxable capacity has been reached are easier to make than to rebut. Reference to the Revenue and Expenditure figures in Appendix V* will show that there has been a marked growth under both heads between the financial years 1936-37 and 1942-43, the most significant fact being the growing proportion which the produce of the income tax bears to the total yield of all taxes. From this it can be inferred that the problem of converting a somewhat inflexible tax system into one which produces some means for development has been partially solved. This is confirmed by the outcry against the income tax, accompanied by the charge that money is being squandered.

104. The attack has been particularly directed against the increasing expenditure on education. It will be recalled that when the Donoughmore Report was under consideration Sir Ponnambalam Ramanathan contended that education should precede the extension of the franchise. He was alarmed at the prospect of political power passing into the hands of men and women of whom such a large proportion were illiterate. Experience since 1931 has

* Page 143.

to some extent justified his apprehensions. Nevertheless it may be questioned whether so much progress would have been made in education in the last decade or so had the suffrage remained restricted. Adult suffrage has undoubtedly stimulated the politically conscious minority to provide greater educational facilities for the rather apathetic majority. Progress has been based not so much on popular demand as on the recognition by leaders of opinion of the need to educate the masses. Ample proof of this may be found in the steps taken to compel parents to send their children to school, and in the fact that so many children are withdrawn before the legal school-leaving age.

105. The total net expenditure on education has risen from some twelve million rupees in 1931 to over thirty-four million rupees in 1945, and a large percentage of the public revenue is now devoted to education. But the figure is deceptive. The Board of Ministers has ruled that capital expenditure on education may not be met out of loan funds. The Minister for Education has in consequence to provide for his building programme out of the annual vote, and this naturally sets a serious limit to it; for if he commits himself heavily in that direction he reduces thereby the amount available for current expenditure on the improvement of already existing facilities. Considering that the total public debt of Ceylon barely exceeds one year's Revenue, such extremely conservative finance cannot be justified. It would be difficult to estimate what the state of education in Great Britain would be if capital expenditure on the provision of school buildings had been met entirely out of revenue.

106. Primary education is legally compulsory; but from what we have said it will be clear that it is not so in fact. There are not nearly enough schools to accommodate all the children, and a large number of the pupils do not attend long enough to gain any real profit from the instruction. In this connection the educational statistics for 1944 given in Appendix VIII* should be studied. It will be noticed that a distinction is drawn throughout between " Government " and " Assisted " Schools, i.e. between the schools completely under Government control and those provided mostly by religious bodies and in receipt of Government grants. It has been the policy of the Minister for Education (The Hon. Mr. C. W. W. Kannangara) since 1931 to provide Government schools throughout the country. The significant fact is that, while there has been very little increase in the number of English and Bilingual schools between 1931 and 1944, there has been a remarkable expansion in the provision of Vernacular (Sinhalese and Tamil) schools. There were 1,395 Government Vernacular schools in 1931 and 2,455 in 1944; the Assisted Vernacular schools increased from 2,246 to 2,814 in the same period. This represents a total increase of 1,628 in this type of school. It will be realised that new buildings could not be provided for all these schools out of the annual revenue. The Minister appealed to public and individual philanthropy for funds to put up semi-permanent buildings where necessary, the State to pay for maintenance and the teachers' salaries. The authorities of Buddhist Temples were also asked to allow schools to be conducted in their halls on similar terms until money was forthcoming. Practically all these schools have now become Government schools.

107. A great increase in the number of Vernacular schools is still necessary to provide primary education for all. Indeed, universal suffrage cannot function properly without it. But a policy of primary education for all involves the provision of considerably more than primary schools. Above all, trained teachers are required. Reference to Appendix VIII will show that there are only 23 Training Schools—5 Government and 18 Assisted—with 990 students. The Minister wishes to increase the total number of Training

* Page 150.

Schools—a policy which has involved him in somewhat acrimonious controversy with the religious bodies. A more serious difficulty, however, is that the education provided in the Vernacular schools cannot become the first stage to secondary and higher education unless the teaching of English is introduced. The Minister aims at the appointment of teachers of English in the Vernacular schools and the establishment of Central schools to which selected pupils may pass for continued education. By this means, children of promise from the villages would have an opportunity of entering into the range of occupations in which a knowledge of English is essential. But so far little progress has been made, largely because of the expense involved. The whole question of future developments in education has been recently examined by a Special Committee, and its recommendations promise to be a major political issue.*

108. Moreover, expenditure on education, though admittedly essential, comes into competition with the demands of other social services. The Government's resources are limited and the calls on them are heavy. A strong case can be made out in Ceylon for the health services; but in fact health and education are largely bound up together. The Minister for Education made a great contribution to public health when he succeeded against fierce opposition in introducing a system of school meals for children. The cost of this service, which has been skilfully brought into relation with the Food Production Campaign of the last two years, has risen from a quarter of a million rupees in 1937 to three and three-quarter million rupees in 1944. The Vernacular schools are practically all rural schools and the instruction given in them has a rural bias. It was therefore possible greatly to extend the school gardens and not only to provide a supplement to the Government allowance for school feeding, but also a considerable addition to the general food supply.†

109. A limited hospital system had been built up in Ceylon before the inauguration of the Donoughmore Constitution. Prior to 1931 the expenditure had for two or three years reached the ten million rupees level. There was in fact a reduction to about nine million rupees in the years of depression between 1931 and 1934, when the malaria epidemic sent expenditure up to eleven million rupees. It has since gradually increased in the direction of fifteen million rupees, a figure which does not include capital outlay on new, and the improvement of existing, buildings. Year by year a few hospitals have been opened and central and branch dispensaries and visiting centres have been provided. But in the years from 1931 to 1944 these have not added significantly to the total already existing at the beginning of the period.

110. Most of the expenditure has been on the clinical treatment of disease. So long as there is such a heavy demand and institutions are under-staffed and under-equipped, this is perhaps inevitable. The real test of health services, however, is whether increasing attention is paid to research and the application of preventive measures. "The future progress, prosperity, and happiness of Ceylon are more bound up with the eradication of malaria and ankylostomiasis (hookworm) than with politics, transport, agriculture, or any other problem . . . The health and efficiency of the majority of the population are being undermined by these two diseases."‡ A survey of the Annual Reports of the Director of Medical and Sanitary Services, particularly since the malaria epidemic of 1934-35, reveals that preventive medicine is

* Report of the Special Committee on Education (Ceylon), Government Press, Colombo, 1943.

† The Food Situation in Ceylon (Sessional Paper XVIII of 1944) and The Schools Emergency Food Production Campaign (Sessional Paper XXII of 1944)—Ceylon Government Press, Colombo, 1944.

‡ Report by the Right Hon. W. G. A. Ormsby Gore, M.P., on his visit to Malaya, Ceylon and Java during the year 1928. Cmd. 3235, 1928.

playing an increasingly important part in State health activities. The campaign against the malarial mosquito and the hookworm have been actively prosecuted, and a great variety of means have been employed to spread the knowledge of hygiene and sanitation. Steps have also been taken to provide drainage and prevent soil pollution. The general problems, however, remain formidable. Housing conditions, water supplies and proper nutrition urgently demand attention. The death-rate remains unduly high and the infant mortality rate in particular is being only slowly reduced.

111. The Donoughmore Commissioners. as we have already mentioned, observed that there were serious gaps in the social structure and instanced the almost complete absence of poor laws, factory laws, workmen's compensation laws, etc. Since 1931 practically every device to ensure what is now called social security has been discussed in Ceylon and some of them have been adopted. The danger has been to overlook the essential differences between the economic structure of the Island and that of a highly developed industrial community. Colombo (population 300,000) is the only large town. Over wide areas a plantation economy prevails and the employers provide housing, schools and hospitals for their work-people. Over still wider areas there are peasant cultivators who, if they are employed at wages, are casual or seasonal workers. Much social and industrial legislation is therefore inapplicable in Ceylon.

112. The provision of poor relief is a good illustration. In a country where the great majority of the inhabitants are on a common level of subsistence—and that a comparatively low one—the introduction of a comprehensive poor law system is impossible. The main problem is that of raising the standard of life, and the poor law should only be concerned with those who, from some misfortune or other, fall below that improved standard. The Poor Law Ordinance, 1939, places the burden of the relief of the non-able-bodied on the local authorities. It covers the usual classes of the aged, the infirm, the sick and children. But while it is intended eventually to apply to the whole Island, it is in fact only in operation in Colombo, Kandy and Galle. The provisions of the Ordinance cannot be extended to the areas of the Urban Councils and Village Committees owing to their lack of funds and the difficulties of administration. Thus for the rest of the Island the Government has still to assume responsibility. Its local Revenue Officers, assisted by District Advisory Committees, afford relief where they consider it necessary, usually in the form of monthly allowances. Casual relief is also given in sudden emergencies, caused by fire, cyclone, flood or other similar cause. The rates of assistance in the case of regular monthly allowances have been recently increased. Expenditure has increased from Rs.127,525 in 1932 to Rs.1,209,340 in the vote of 1944-45.

113. Relief of the unemployed—a State liability—has not taken the form of direct money payments. The principle of providing work was adopted during the depression of 1931. The work was usually the construction of roads, the draining of swamps and similar tasks. The Kottukachchiya State Farm (Puttalam District) was opened in 1941 with 1,000 labourers from the adjoining areas where there was heavy unemployment in the coconut industry. But in 1942 all relief work was suspended, for war conditions had rendered it unnecessary. Expenditure on unemployment relief fluctuated from Rs.207,692 in 1931-32 to Rs.674,914 in 1941-42. It must be emphasised, however, that unemployment in the proper sense can only occur in the towns and on the estates. In the rural areas depression means a lowering of the standard of life of the peasant cultivator, and the only real solution is to be found in the maintenance of agricultural prosperity. This raises questions of technical improvements in cultivation, co-operation in purchasing and

marketing, and—since the population is steadily increasing—the reclamation of land.*

114. An Employment Exchange was set up in Colombo in 1938. It did extremely useful work in enabling the unemployed workers and prospective employers to get into touch with one another until 1942, when the number of registrations naturally fell off. The registrations in 1938 totalled 29,484; by June, 1944, they had fallen to 329. The Board of Ministers has approved of the establishment of Employment Exchanges in various parts of the Island for dealing with post-war employment problems.

115. Reference has already been made to the wide responsibilities of employers in respect of estate labour. Since this labour was largely imported from India, conditions were laid down by the Indian Government; and these were defined in the Ordinance relating to Estate Labour (Indian), 1889, and subsequently amended in 1890, 1909, 1921, 1927, 1932 and 1941. Estate labour enjoys a measure of protection greater than and different from that enjoyed by other workers. For the latter the more usual safeguards have been gradually built up—workmen's compensation, factory legislation and the freedom to form trade unions. Statutory provision for the payment of compensation to injured workmen was introduced by the Workmen's Compensation Ordinance, 1934. The responsibility rests on the individual employer, who may cover his liability by insuring with an approved company.

116. The factory legislation in Ceylon is somewhat fragmentary because the conditions which call for it are exceptional. An Ordinance of 1923, supplemented by Ordinances of 1940 and 1941, deals with the Employment of Women, Young Persons and Children on the lines laid down by the International Draft Conventions. The employment of any female in manual labour underground is prohibited by an Ordinance of 1937. The Maternity Benefits Ordinance, 1939, provides that no woman worker shall be employed for four weeks following confinement, and maternity benefit is payable at the rate of 50 cents a day for six weeks. The Legislation already existing calls for adequate inspection to enforce it. There is a comprehensive Factories Ordinance of 1942, but it has not as yet been made operative.

117. The principle of the minimum wage was introduced in the Minimum Wages (Indian Labour) Ordinance of 1927, amended in 1935. It enabled the Governor to appoint an Estate Wages Board in any Revenue District to fix minimum rates for its area. This was confined to the estates. In 1941 a General Wages Board Ordinance was passed. It authorises the Minister for Labour, Industry and Commerce to establish a Wages Board for any trade, with members representing employers and workers in equal proportion. The Wages Board may fix minimum wage rates for time-work or piece-work and its decision is binding on all employers. It may also fix the number of hours in a normal working day, and specify a weekly holiday and the number of days for an annual holiday. The Wages Board (Amendment) Ordinance, 1943, gave further powers to the Wages Board, including that of fixing a basic rate and a special allowance termed " dearness allowance " based upon the rise in the cost of living. Wages Boards have been set up for the Rubber Growing and Manufacturing Trade, Tea Growing and Manufacturing Trade, the Coconut Trade, the Engineering Trade, the Printing Trade, the Plumbago Trade and the Arrack, Toddy and Vinegar Trades.†

* For a brief description of some of the steps now being taken to reclaim and irrigate land *see* paras. 151 to 168.

† Fuller details will be found in Labour Conditions in Ceylon, Mauritius and Malaya; Report by Major G. St. J. Orde Browne. Cmd. 6423, 1943.

118. The résumé we have been able to give in this chapter of the principal measures of social reform introduced under the Donoughmore Constitution has necessarily been brief. We trust, however, that it has been adequate to indicate the grounds on which we base our opinion that the grant of universal suffrage in 1931 has undoubtedly justified itself. It is important to remember that in Ceylon as elsewhere the questions which give rise to political dissension receive considerably more publicity than those on which there is general agreement; and though in the course of our review of the unceasing agitation for constitutional reform since 1931 we have expressed our opinion that the Donoughmore Constitution had little to commend it, we have thought it right to bring out in this chapter those features which would sustain an opposite conclusion.

CHAPTER VII

THE MINORITIES

119. " Institutions must represent or be suited to the particular phenomena they have to deal with in a particular country. It is through history that these phenomena are known. History explains how they come to be what they are. History shows whether they are the result of tendencies still increasing or of tendencies already beginning to decline."*

Bearing in mind these words of Lord Bryce, we have dealt in the preceding chapters mainly with the history of the events leading up to our appointment. We now go on to consider somewhat more fully the history and character of the minorities in Ceylon and the disabilities of which they complain.

120. It will have been observed that the relations of the minorities—Ceylon Tamils, Indian Tamils, Muslims, Burghers and Europeans—with the Sinhalese majority present the most difficult of the many problems involved in the reform of the Constitution of Ceylon.

The Ceylon Tamils

121. Of these minorities, the Ceylon Tamils number about 700,000. They constitute a compact and closely knit community dwelling chiefly in the Northern and Eastern Provinces. As already mentioned, their ancestors were originally settlers from Southern India, but who were first established in the Island—the Ceylon Tamils or the Sinhalese—is a matter of controversy upon which we do not feel ourselves competent to embark. The history of Ceylon between the Third Century B.C. and the Seventeenth Century A.D. is largely the history of Tamil invasions and of conflicts between Tamil and Sinhalese Kings. But whatever the position may have been in the past, the Ceylon Tamils now form an integral part of the Ceylon people and, since the beginning of the British era in Ceylon, have played an important rôle in every sphere of Ceylonese life. The majority of them are engaged in agriculture, but in spite of their comparatively small numbers they have held their own in the learned professions, in the Public Services and in the counsels of the Government. In the words of Sir Edward Stubbs (Governor of Ceylon from 1933 to 1937), " My predecessors and myself have always recognised that for the good government of the country the brains and industry of the Tamils were as useful in the past as they would be invaluable in the future. We shall always require their assistance."

122. There are at present eight Elected Members of the State Council who are Ceylon Tamils. One of them is the Speaker and another the Minister for Home Affairs.

* Bryce, " Studies in History and Jurisprudence ", 1901.

The Indian Tamils

123. The Indian Tamil community is of much later origin. These Tamils first came to the Island as labourers on the plantations in 1837, and the systematic recruiting of them began in 1839. Their numbers have tended to ebb and flow according to the economic position of the plantations, and in normal times they move to and from India in a continuous stream. Over a long period of years the planting interests have built up an elaborate organisation for the importation of this labour and few Indian immigrants come to Ceylon for work on the plantations, or estates as they are often termed, except by this means.

Owing to the curtailment of the Census of 1931 for reasons of economy, it is not possible to estimate with accuracy the number of these estate workers now in the Island; but figures supplied by the Controller of Labour showed the Indian Tamil population on estates at the end of 1936 to have been approximately 659,000, including women and children.* In view of the ban on the further emigration of Indian unskilled workers to Ceylon imposed by the Government of India in 1939 (see paragraphs 226-231), this figure is not likely to have been materially altered and it is probably safe to estimate the present number at between 650,000 and 700,000.

124. To the Indian Tamil estate workers there must be added a non-estate Indian population—largely Tamils—estimated at the end of 1936 to be about 200,000. The great majority of them were at that time employed in government and municipal service on the docks, harbours and railways, and as domestic servants, the remainder being engaged in trade and commerce.

125. Accordingly, at the present day, besides some 700,000 Ceylon Tamils, the number of Indians—Tamil and others—resident in Ceylon can be estimated at nearly 900,000. There are considerable bonds of sympathy between the Ceylon and Indian Tamils based on ties of race, religion, culture and language.

126. One Nominated and two Elected Members of the State Council are Indian Tamils.

The Muslims (Moors and Malays)

127. The Muslim community,† numbering nearly 400,000, is scattered all over the Island—the main concentrations being in the Eastern Province and in Colombo, Puttalam, Galle and Mannar. By far the largest portion of this community is descended from Arab merchants and mariners, who visited and settled in Ceylon many centuries ago. At the time of the Portuguese invasion in the Sixteenth Century these Muslims—then as now known as Moors—had secured a virtual monopoly of the export and import trade, and the majority of them are still engaged in trade, though a considerable number—perhaps as many as one-third—are occupied as cultivators in the Eastern Province.

The Moors are a thrifty and industrious people but have, for various reasons, neglected their secular education and have not in that respect kept abreast of the other communities. They are well aware, and so is the Government of Ceylon, that this short-sighted policy has handicapped their progress, and efforts are being made to remedy the errors of past years.

128. A small section of the Muslim community—about 18,000 in number—is known as Malays. Their ancestors originally came to Ceylon from Java as soldiers in the service of the Dutch, and this may account for the fact that many of their descendants to-day hold positions in the Police force and

* Sessional Paper III of 1938.

† The term "Muslim" is not an appellation of race but of a religious community.

on the estates as superintendents of labour. Although Muslims, the Malays are distinct from the Moors both in race and language.

129. There are three Muslim Members of the State Council, two Nominated and one Elected. One of the Nominated Members is a Malay but does not represent the Malay community as such.

The Burghers

130. The Burghers, numbering some 30,000, are descendants of the Dutch colonists who remained in Ceylon after the capitulation to the British in 1796. At first they formed a necessary and valuable link between the new British rulers and the Sinhalese and Tamil inhabitants. Subsequently they have played a leading part in the social and political development of the Island, filling prominent positions, especially in the medical and legal professions.

The spread of education, the closer contact of the Ceylonese with European thought and industry, and the more recent growth of national aspirations have, as was to be expected, combined to diminish the dominant position at one time held by the Burghers in the public and professional life of Ceylon. Nevertheless, they continue to maintain their identity, and occupy an important place in the intellectual life and Public Services of the Island, enjoying the respect and good will of the other communities.

131. The Burghers are represented in the State Council by one Nominated Member.

The Europeans.

132. The Europeans, mostly British, amount to about ten thousand, mainly planters, merchants, bankers, business men and civil servants of the higher grades. Most of the planters are employees of Limited Liability Companies in the United Kingdom owning tea and rubber estates in various parts of the Island; a few of them are proprietary planters.

133. The British business community is concentrated in Colombo and has for a long time held a predominant position in the financial and commercial activities of the Island. The amount of British capital invested in Ceylon is very large, though it has diminished of recent years as the result of the sales of estates to Sinhalese and Indian purchasers.

134. The Europeans are represented in the State Council by four Nominated Members.

135. Such are the principal minorities inhabiting Ceylon. Whilst, as we have said, there are considerable areas in which the minorities predominate, many individuals and small groups belonging to minority communities are scattered throughout the Island, living amicably alongside their Sinhalese neighbours. Yet when political issues arise, the populace as a whole tends to divide, not according to the economic and social issues which in the West would ordinarily unite individuals belonging to a particular class, but on communal lines. It is this factor more than any other which makes difficult the application of the principles of Western Democracy to Ceylon.

136. In a State where political parties are divided on shifting issues of social and economic policy, the party for the time being in a minority tends to think in terms of its eventual return to power, and the party in office, of the day when it will lose the confidence of the people and go into opposition. In both parties a sense of responsibility will arise which, on the one hand will prevent the Government from indulging in harsh or oppressive measures at the expense of its opponents and, on the other, will make the opposition

less prone to detect in measures promoted by the party in power grounds for accusations of partiality or discrimination.

137. Where, however, the divisions are of a more permanent character and are based on such factors as race or creed, the normal ebb and flow of public opinion is lacking, and one section may find itself in the position of a permanent minority. It is inevitable that such a section, having little hope of assuming power, will tend to scrutinise with the utmost care everything the Government does and will be eager to detect and to stigmatise as discriminatory any provisions which appear in the slightest degree to favour one section of the community, even though they may, in fact, be based on sound reasons of public policy. In applying these considerations to Ceylon, it is necessary to consider to what extent the fear of domination and oppression by the Sinhalese majority—the main theme of the evidence submitted to us by the All-Ceylon Tamil Congress—is justified, and what, if any, steps should or can be taken to remove this apprehension. In the next chapter, therefore, we shall proceed to examine the allegations of discrimination against the minorities which have been submitted to us

CHAPTER VIII

DISCRIMINATION

138. The attitude of the Ceylon Tamils in this matter is epitomised in the following passage from their memorandum of evidence:—

> "Discrimination against the Ceylon Tamils arises not so much from legislative as from administrative or executive acts of commission or omission. The community has been filled with grave apprehension by the cumulative effect of the inequitable distribution of public expenditure and the manner of dealing with public appointments."

If discrimination is practised against a minority, it is usually by means of administrative actions which are more difficult to detect and expose than are legislative measures. Apart from enactments affecting immigration and the franchise of the Indian Tamils, with which we deal later, the Ceylon Tamils cited only two instances of legislation—the Buddhist Temporalities Ordinance (No. 19 of 1931) and the Anuradhapura Preservation Ordinance (No. 34 of 1942).

The Buddhist Temporalities Ordinance, 1931

139. In consequence of the general dissatisfaction felt by the Buddhist community, both priesthood and laity, with the statutory provisions affecting the administration of the Buddhist Temporalities, an amending Ordinance was passed in March, 1931, providing that all the revenue and expenditure of Buddhist Temples should be supervised and examined by the Public Trustee, who was to recover the cost of this administration from the property of the Temples. The Governor was required to make provision for the levying of the necessary contributions.

By 1933 only a negligible sum had been obtained by way of contributions, and in that year their recovery was suspended by Order and has not yet been resumed. Since then, two attempts have been made by the Government of Ceylon to get modifications of the 1931 Ordinance through the State Council, but without success. Meanwhile, the Public Trustee has continued to carry on the administration of the Buddhist Temporalities at the public expense.

140. The Ceylon Tamils complain that a total loss of nearly half a million rupees during the period 1931 to 1943 (the cost of the Public Trustee's administration) has been incurred by the public revenue, and that, from year to year, the general taxpayer is being compelled to pay for the administration of the Temporalities of a section of the population. This is considered by the minority communities to amount to discrimination in favour of Buddhism, the religion of the majority of the Sinhalese.

141. *Prima facie* this contention seems to us to be correct and to afford evidence against the Sinhalese majority in the Council of partiality.

The Anuradhapura Preservation Ordinance, 1942

142. The purpose of this measure was to preserve the historic city of Anuradhapura and facilitate the development of a new town outside the zone of its archaeological remains. An Estimate was carried in the Council in March, 1941, to provide for the services of a Town Planning expert, and in the autumn of that year the Bill was introduced. It was severely criticised on the ground that the Tamils and Muslims formed a considerable section of the population of Anuradhapura (about 10,000 in all) and either owned or occupied the greater portion of the land affected by the measure. The Bill was passed and forwarded for assent to the Governor in December, 1941. Subsequently, the Governor notified the reservation of the Bill for the signification of His Majesty's pleasure, and on receipt of instructions from the Secretary of State that His Majesty had been pleased to give his assent, it was proclaimed by the Governor in September, 1942.

143. Whether the method adopted by the authors of this measure is the best way of preserving the ruins of Anuradhapura we are unable to say. Our brief visit to this historic city would not qualify us to express an opinion; but we are naturally in sympathy with a measure designed to safeguard the remains of an ancient city of great extent and beauty. We think that we are entitled to assume that the Ministers have given long and careful thought to this proposal, which is in any case in the best interests of Ceylon as a whole, and not to the advantage of any one community; and we are not disposed to ascribe to them in this matter an intention to discriminate against any section of the minorities.

144. Other cases of legislation were submitted to us by the European Association of Ceylon, to two of which we desire to draw attention—the Fisheries Ordinance No. 24 of 1940, and the Omnibus Services Licensing Ordinance, No. 47 of 1942. The first of these prohibits any person, except a Ceylonese or a Ceylon Company, from taking any fish for profit in Ceylon waters without the authority of a fishing licence. The second provides for the revocation of any road service licence issued to a Company unless at least 85 per cent. of the share capital of the Company is held by persons who are Ceylonese. " Ceylonese " is defined as a person domiciled in Ceylon and possessing a Ceylon domicile of origin.

145. Both these Ordinances are regarded by the Europeans as discriminatory. *Prima facie* that would appear to be their effect and, if so, they are regrettable, even though the number of individuals prejudiced or likely to be prejudiced is very small.

Administrative Actions: Trade and Commerce

146. It has been the policy of the Government of Ceylon sedulously to foster the co-operative movement in the Island, and as a result of

State action this movement has made great strides, particularly since the outbreak of war. There arose at that time widespread profiteering in consumer goods, especially food and clothing, and in order to control the prices of essential commodities and ensure that they reached every citizen the Ceylon Government imposed a State monopoly on imports and encouraged the Co-operative Movement. The great success of this movement has led to an increase in the volume of Government support and to its extension to the remotest parts of the Island.

147. The All-Ceylon Tamil Congress stated to us that " the practically compulsory nature of the application of this movement over the whole Island at State expense cannot be looked upon without serious misgiving ", and deduced from this policy a desire on the part of the Sinhalese to cut out the trade of the Indians and Europeans. They averred that the Indians had an aptitude for trade which the Sinhalese did not possess, and that the Government was seeking to employ the machinery and finances of the State to benefit the Sinhalese community at the expense of others.

148. It may well be that the Indians are specially qualified by racial characteristics and habits to become successful traders, and have in that respect an advantage over the Sinhalese; but we think that this is a consideration which should not be allowed to militate against the encouragement by the Government of co-operative trading. It is of course quite intelligible that Indian and other merchants including Sinhalese should regard with anxiety and disfavour the development of this movement—particularly when it is mainly the result of governmental stimulus. Nevertheless, we think that this policy cannot reasonably be criticised on the grounds of communal discrimination. On the contrary, having visited a number of these co-operative institutions, we are convinced that they are of great value, not only materially but educationally, to a large proportion of the poorer inhabitants of the Island, Tamil as well as Sinhalese. Moreover, an important factor in the future success of the Government's agricultural policy will be a strong co-operative movement among the peasants.

149. Similar dissatisfaction with the co-operative movement was expressed by representatives of the Muslim community, who at the same time complained to us that " cut-throat competition and exploitation from foreigners, especially Indians, contributed towards gradually ousting them from the one profession they had learnt and carried on from father to son for generations."

Public Expenditure

150. Wherever a minority problem exists, it is in the sphere of public expenditure and in the distribution of public revenue that the minorities are likely to be suspicious and sensitive. The minorities of Ceylon are no exception, and we have been furnished by the All-Ceylon Tamil Congress with data purporting to demonstrate the preference shown by the Government of Ceylon towards the Sinhalese community in the allocation of public revenue and works.

Agriculture

151. Excluding the estates, it is not too much to say that the problem of agriculture in Ceylon is the problem of irrigation. Rice is the staple diet of the peasantry and in at least five out of the nine Provinces the success or failure of the rice crop is contingent upon arrangements being made for an adequate supply of water to the paddy fields. But the dependence of the peasants, and indeed of the whole Island, upon the rice crop has been greatly intensified by the Japanese occupation of Burma, the source of the bulk of the rice supply to Ceylon.

152. For over 2,000 years Sinhalese and Tamil kings in Ceylon had constructed great lakes, known as tanks*—some of them covering several thousand acres—to provide water storage. From time to time these tanks were destroyed by invaders—a deadly method of bringing starvation and ruin to the kingdom of an adversary—or left in disrepair and abandoned when districts became infested by malaria. In recent years much of the agricultural expenditure of Ceylon has been applied to the construction or re-construction of these great works of irrigation. Needless to say, these operations are of considerable magnitude, far beyond the resources of private enterprise. They were the work of Kings in the past, and are the responsibility of the State to-day.

153. From the beginning of this century up to 1931 about eighteen and a half million rupees were spent by the Government on what is termed " major works construction," i.e. irrigation works maintained by the Government for which land-owners are liable to pay irrigation rates. Of this amount, over eight million rupees, or nearly 50 per cent. of the total expenditure, were devoted to the Tamil (Northern and Eastern) Provinces. The population of the Northern Province is estimated, as at 30th June, 1944, at about 426,000 and of the Eastern Province at about 235,000, making in all about 661,000 or a little more than one-tenth of the total population of the Island.

154. In 1931, the estimated irrigable area, i.e. the actual rate-paying lands plus lands which could be served by the irrigation works, was 238,000 acres, of which about 130,000 acres were in the Northern and Eastern Provinces.

155. Between 1931 and September, 1943, the expenditure on major works construction amounted to about eleven and a half million rupees, of which the Northern and Eastern Provinces have received rather more than two million rupees, or about 19 per cent. of the total; most of the acres rendered irrigable by these works since 1931 were in the Central and North Central Provinces.

156. There was very little public expenditure on minor works, i.e. village tanks, prior to 1931. Between then and September, 1943, out of a total public expenditure on these works of about three and a quarter million rupees, the Northern and Eastern Provinces account for about four hundred thousand rupees, or 12½ per cent. of the total. In terms of acreage served by the village works (about 212,000 acres), 14,500 or about 7 per cent. of the total were in these two Provinces.

157. The question now arises whether these figures can reasonably be held to indicate discrimination against the Ceylon Tamils. We must here observe that the seriousness of a charge of discrimination based upon differential expenditure per head of the population or upon the acreage of areas benefited by irrigation is extremely difficult to evaluate. To assess its validity would involve a detailed investigation into topographical questions, technical problems, the supply of labour and material and so forth, which we were unable to undertake. But certain facts and arguments have been submitted to us by way of answer to this charge:—

(i) Of the estimated area of the Northern Province for which irrigation facilities have been provided (40,100 acres), only 31,687 acres have been cultivated, leaving a balance of about 8,000 acres for which irrigation exists but which have not yet been brought under cultivation. The comparable figure for the Eastern Province is about 24,000 acres. There is therefore

* Some of the larger tanks are marked on the general map at the end of this volume.

a balance of about 32,000 acres in these two Provinces irrigable and capable of cultivation but not cultivated.

It is possible that one of the reasons for the failure to cultivate the available irrigable area to its full extent is lack of labour due to the requirements of the military authority. But while this area of land remains uncultivated, the Government may feel disinclined to incur expenditure on further development.

(ii) Considerable works of major irrigation have been carried out in the Northern and Eastern Provinces since 1931, but expenditure on these works neither can nor should always be in proportion to the acreage benefited.

(iii) To construct a reservoir, a valley, or at least a depression, is needed. The Northern and Eastern Provinces are generally flat and not therefore so suitable for village tanks as are the North-Central and North-Western Provinces, where most of the village works are situated.

We think, however, that this is not a complete answer to the Tamil contention that expenditure is required, not on the construction of new village tanks, but on the repair and restoration of those already in existence.

(iv) On the basis of public expenditure per head of the total population of the Island, the people of the Northern and Eastern Provinces were very well served in the era prior to 1931 and received a good deal more than their proportionate share of the revenue available for works of irrigation; and though, since 1931, their share has been substantially diminished, it is still in excess of the *per capita* ratio.

We think that this argument should be qualified by the consideration that a portion of the population of Ceylon resides in areas where the peasantry is less numerous and the need of irrigation works is smaller. For instance, we doubt whether the population of the City of Colombo (some 300,000 and mainly Sinhalese) should be taken into account in computing proportionate expenditure on irrigation. If allowances of this nature are made, the comparison of expenditure on irrigation per head of the total population of Ceylon with that of the Tamil Provinces may well show a less favourable result to the latter.

158. Even so, the fact remains that of an irrigation expenditure of some thirty million rupees between 1905 and September, 1943, over ten million rupees have been spent in the Northern and Eastern Provinces, and complaints of special favours shown to these Provinces might well have come from other Provinces in the Island. But the sharp decline in expenditure in the Northern and Eastern Provinces since 1931 has, as might be expected, provoked the charge of discrimination to which we have referred.

159. We think that the following is the true explanation. It appears to us that prior to 1931 agricultural policy had been largely based on strictly economic considerations, it being held that, in terms of output—particularly of rice—better results at less cost could be obtained from the Northern and Eastern Provinces than from the others. Consequently, a large portion of the available resources was allocated to the construction and restoration of tanks and irrigation in areas most favourable to production and, as a result, agricultural conditions there—and particularly in the Eastern Province where afforestation has also been carried out on an extensive scale—compare in our opinion favourably with conditions in the Sinhalese Provinces such as the North-Central, the North-Western and the Southern.

160. 1931, the first year of the State Council, coincided with a year of severe financial stringency, and a sub-committee of the Executive Committee of the Ministry of Agriculture and Lands was appointed to consider measures

of reorganisation and retrenchment. This sub-committee recommended that the principal activities of the Irrigation Department should be directed to the restoration and improvement of the village irrigation works throughout the Island, and that the development of existing major works should be undertaken only to meet the actual demand (as opposed to the possible speculative demand) for irrigable land. The recommendation was accepted, but it is clear to us that this policy was designed to meet a period of financial stress and was not a policy to be pursued at all times and in all circumstances. When conditions improved and more funds became available, the Executive Committee took steps to formulate a long-range policy in the matter of land development and in the extension of irrigation and agriculture. It should here be remembered that under the Constitution then and now in operation, the responsibility for agricultural policy is shared between the Minister for Agriculture and the members of the Executive Committee, which may include State Councillors belonging to any racial group in the Island.

161. Within a few years of 1931 a vigorous campaign was started to improve the state of agriculture in the more backward areas, to arrest the drift from the countryside to the towns, and to enable villagers to remain on lands which were fast sinking back into the jungle. That the population of these areas was mainly Sinhalese is, in our judgment, a factor that played little part in the formulation of this policy. Indeed, it was endorsed in the State Council by a leading member of the Tamil Congress, who warmly eulogised the Minister for Agriculture and made no suggestion of discrimination.

162. Extensive schemes of colonisation and land development were instituted, numerous experimental and demonstration farms established, and a far-reaching programme for the improvement of livestock set in motion. There were many failures at the start. The pioneer colonists had a hard struggle and experience revealed the necessity, when a colonist was placed on the land, of providing him with a complete farm. This involved the clearing of jungle, the ridging and stumping of fields, the construction of a farm house and other buildings, and an adequate supply of planting material, seed, agricultural implements and livestock. All this work was undertaken by the Irrigation Department of the Ministry of Agriculture, in addition to the provision of irrigation facilities.

163. It should also be noted that it is part of this policy to encourage mixed farming. The colonist is no longer dependent entirely upon the cultivation of rice, as his farm consists of a mixture of paddy land and high land, the latter being in many cases suitable for the growing of citrus fruits.

164. In view of the criticisms expressed by representatives of the Northern and Eastern Provinces, we are glad to have been able to see for ourselves a number of these colonies, farming institutions and cattle breeding stations, and to inspect the provisions made for agricultural education and training. It is no part of our duty to report upon the agricultural development of the Island, but we cannot refrain from expressing our admiration for the immense efforts which have been made and the results already achieved, in spite of the lack of staff, plant and material due to the exigencies of war.

165. The policy which is being pursued is a long-term one. The Ceylon Tamil witnesses have criticised it on two grounds:—

(i) that at a time when the cessation of imports of rice from Burma made the cultivation of home-grown rice exceptionally important, public funds were devoted to schemes which would not materially augment the rice supply for many years.

We think that this criticism overlooks the fact that the policy was formulated and put into practice some years before the outbreak of war with Japan, and that to have abandoned it and switched over at a moment's notice to a short-term programme would have been very difficult, if not impossible;

(ii) that, confronted with the alternatives of opening out and developing land in the jungle and settling on it a population moved from other areas, or of extending the cultivation under village irrigation works, the consolidation of areas already developed in the villages and their improvement by intensive methods, the Government was ill-advised in adopting the first alternative and concentrating their efforts on the major works instead of the minor.

Here again, we think that it has escaped the notice of the critics that it is only since 1931 that appreciable sums of public money have been devoted to village tanks. Before that date, public expenditure on these minor works was relatively small. The amount now spent on the annual maintenance of these works exceeds the annual expenditure upon their construction at the time when the Minister for Agriculture first assumed office.

166. In view of the relatively limited resources at the command of the Government, it was inevitable that the larger proportion of public revenue devoted to irrigation works in the Sinhalese Provinces during the last decade should have involved a considerable diversion of funds otherwise available to the Northern and Eastern Provinces. But there is much to be said for the argument that the restoration of agriculture in the Sinhalese Provinces was long overdue and that the Government's policy was an endeavour to make good the neglect of past generations and to base public expenditure on the needs of the locality.

167. It is not within our terms of reference to pronounce judgment upon the wisdom of the agricultural policy pursued by the Ceylon Government, or to make any recommendation in regard to future agricultural policy. But from our own observations and after careful consideration of the whole matter, it would in our opinion be wrong to condemn this programme as discriminatory or to censure it as an attempt to favour the Sinhalese at the expense of another community. We think that the attitude of the Ceylon Government can be fairly summed up in a reply given in September, 1944, by the Minister for Agriculture to one of the Members for the Eastern Province:—

" Irrigation works are needed and have to be carried out in all parts of the Island, and it is not my intention to neglect any Province. All that could be done for any Province we are ready to do. Merely because the other Provinces now receive the attention which they did not get before, merely because we have made the Irrigation Department an ' all Island ' Department carrying out Island-wide activities, my Honourable Friend should not think that the Eastern Province is being neglected."*

168. We realise, however, that the concentration of so much effort in Sinhalese Provinces is bound to cause disappointment to agriculturalists in other parts of the Island, and we have no doubt that the Government will do everything in its power to allay such feelings. We have been assured that plans and surveys have been completed for a number of schemes designed to benefit the Northern and Eastern Provinces, and that, when more staff, plant and material become available, most, if not all, of these schemes will be undertaken. In that connection, we venture to express the hope that the

* Ceylon State Council Debates : September 1st, 1944, page 1895.

repair and restoration of irrigation works in the Mannar and Mullaittivu districts of the Northern Province may receive a high priority—we visited this area and observed widespread indications of deterioration and decay in the villages and countryside—: and also that the means of communication between the Northern and Eastern Provinces, which in our opinion leave much to be desired, should be materially improved.

Medical Services

169. As we have endeavoured to make clear in Chapter VI, one of the most noteworthy and commendable achievements of the Government of Ceylon during the last decade has been the development of the social services, including health and education. But according to the evidence of the All-Ceylon Tamil Congress, out of some twelve million rupees voted from revenue and loan funds between 1931-1945 for the construction of hospitals and dispensaries, little more than a million rupees were allocated to the Northern and Eastern provinces; and out of 130 cottage and rural hospitals, dispensaries and maternity homes established in the Island during that period, only 14 are situated in those Provinces. We are unable to estimate the gravamen of this charge without knowing the size of the various institutions or being able to compare the respective needs of the other Provinces.

170. Without doubt the Island was, prior to 1931, woefully deficient in health services, and since then the Government has continued to make strenuous efforts to overtake the lack of these facilities. We visited a number of hospitals and maternity homes in various parts of Ceylon and, with the exception of one in the Mullaittivu district of the Northern Province, to which we drew the attention of the Government, we were favourably impressed.

171. It seemed to us that in the district of Jaffna the major part of the medical treatment available was provided by voluntary hospitals founded and conducted by the American Missionary Society. It may be that the absence of similar private provision elsewhere accounts for the larger proportion of public expenditure on the construction of hospitals, etc., in the rest of the Island, but from the information at our disposal we are unable to endorse the charge of discrimination against the Government in this regard, and we see no reason to suppose that in the allocation of public funds to these services the Government has been actuated by any other consideration than the needs of the various localities.

Education

172. Jaffna has benefited for over a century from first-rate secondary schools founded and endowed by missionary effort of various denominations. But the complaint was made to us that despite the immense increase in the education vote since 1931, a negligible provision of State schools had been made for those parts of the Jaffna district which did not enjoy the benefit of English elementary and secondary education.

The figures supplied to us by the Ceylon Tamil witnesses showed that out of more than 4,000 schools established or assisted by the Government during the period 1933 to 1942, over 3,000 were Sinhalese and only about 900 Tamil, and that whereas in the case of the Sinhalese the Government schools exceeded the number of Assisted schools by more than one-third, the Government Tamil schools were only one-third of the Assisted Tamil schools. These figures indicate an increase in the provision of schools much in excess of the official figures supplied to us. But in any event, we do not feel ourselves able to draw any useful inference from them because we have no accurate knowledge of the respective educational facilities available to

the various Provinces at the time of the formulation of the Government programme more than a decade ago. It is, however, generally admitted that for a very long time the provision and standard of education and the degree of literacy among the Ceylon Tamils have been markedly superior to that possessed by the rest of the Island; and as will be seen shortly striking evidence of that fact is furnished by the number of Ceylon Tamils who gain admission by competitive examination to the Public Services.

173. Accordingly, as in the case of agriculture and health, we are more disposed to attribute the discrepancies in expenditure and disproportionate allocations of public funds of which complaint is made, to the Government's desire to redeem certain localities and communities from the neglect of past years than to any deliberate partiality towards racial or religious interests. Education among the Muslims, for instance, has in the past, for various reasons, been relatively backward. We were much impressed by the efforts of the Minister for Education, himself a Sinhalese and a Buddhist, to promote the educational advance of this community.

Public Appointments

174. We received from the All-Ceylon Tamil Congress complaints of discrimination against the members of their community in regard to appointments in the Public Services. This matter provides a common source of dissension between majority and minority communities, but in this case the complaint did not, as might have been expected, disclose that the proportion of posts held by the Ceylon Tamils was smaller than the size of their community would justify. On the contrary, the Ceylon Tamils appear, at any rate as late as 1938, to have occupied a disproportionate number of posts in the Public Services. In that year a reply to a request from a Sinhalese Member for a statement giving the racial strength of the officers of the various Departments of Government, including the Public Works Department, showed that of 6,002 pensionable officers, 3,236 were Sinhalese and 1,164 Ceylon Tamils. If these posts had been allotted in proportion to the population of each community, the share of the Ceylon Tamils would have been about 600. That they have won for themselves a much larger share is a consequence of the higher standard of literacy and education which this community has so long enjoyed, and of its energy and efficiency. For similar reasons the Burghers have achieved an even more remarkable position, for with a population of some 30,000 they held in 1938 769 pensionable posts.

175. It does, however, appear that what was described to us as " the preponderant position occupied by the Tamils in the Public Services, especially in the clerical services by the open competitive examination " is now being challenged by competition from the Sinhalese. The Tamil witnesses maintained that in order to improve the chances of Sinhalese candidates, various small changes in examination syllabuses and conditions of entry have been made as a result of the intervention of Sinhalese Ministers, who have also endeavoured in various ways to use their influence, e.g. with Selection Boards, to favour candidates of their own race. One of the examples cited to us was that before 1931 arithmetic was a compulsory subject for the General Clerical Services examination. But after the introduction of the Donoughmore Constitution in that year this subject was deleted from the list of compulsory subjects because the well-known aptitude of the Tamils for mathematics was thought to give them an advantage in it over their competitors of other races.

176. It appears to us that there have been minor instances of this kind of discriminatory action by the Sinhalese, and there can be no doubt that Ministers have used their influence, as is too often the custom in the East, in support of candidates for public appointments where they could. But it

would not in our opinion be right to regard the Sinhalese challenge to the predominant position of the Tamils in public appointments as based on such small acts of discrimination; rather is it the natural effect of the spread of education and of the efforts being made to bring other portions of the Island up to the intellectual level of one portion of it. Our recommendations as regards the Public Services Commission should, if fully carried into effect secure that in future strict impartiality will prevail in all matters affecting Public Appointments.

In this connection, we cannot help recalling a period in our own history when, as the result of the superior educational facilities and better teaching prevalent in Scotland, a minority was enabled to secure a larger share of administrative and executive posts in the United Kingdom than could have been justified on any proportional allocation. Since then the English have made strenuous and not altogether unsuccessful endeavours to redress the deficiencies of their past.

Conclusion

177. A careful review of the evidence submitted to us provides no substantial indication of a general policy on the part of the Government of Ceylon of discrimination against minority communities. But when a minority, rightly or wrongly, feels itself to be for ever debarred from obtaining an adequate share of the responsibilities of government, it becomes particularly apprehensive of the actions of what it regards as a permanent and unassailable majority. Such anxiety will not be mitigated by a prospective increase of the majority's powers, and as the All-Ceylon Tamil Congress put it, " The near approach of the complete transference of power and authority from neutral British hands to the people of this country is causing in the minds of the Tamil people, in common with other minorities, much misgiving and fear."

178. We do not ourselves consider that these apprehensions are justified by what has happened in the past, but we realise that they are felt, and we have borne in mind throughout our Report the possible repercussions upon minority interests of our recommendations. It will behove the Sinhalese majority to take the utmost care to avoid giving cause for any suspicion of unfairness or partiality. In that regard some of the speeches of Sinhalese Members delivered inside and outside the State Council emphasising the solidarity of the Sinhalese and threatening the suppression of the Ceylon Tamils strike us as singularly ill-advised.

But we are satisfied that the Government of Ceylon is fully aware that the contentment of the minorities is essential, not only to their own well-being but to the well-being of the Island as a whole. If it were otherwise, no safeguards that we could devise would in the long run be of much avail. Nevertheless, until the minorities become reassured or are themselves in a position to assume the reins of office, certain safeguards will be necessary, as indeed is recognised by the authors of S.P. XIV. These safeguards will appear in the various recommendations which we shall make in succeeding chapters of this Report.

CHAPTER IX

THE KANDYAN PROBLEM

179. In Chapter VI of their Report the Donoughmore Commissioners considered the special position of the Kandyan Sinhalese and dealt with the series of demands generally known as " The Kandyan Claim." A résumé of the Claim and the arguments on which it rests will be found on pages 104-105 of the Donoughmore Report, in Appendix V of which the two principal historical documents—the Convention of the 2nd March, 1815, and the Government Pro-

clamation of the 21st November, 1818—are reproduced in full. Very briefly summarised, the grounds on which the Kandyans base their claim to a special position under the Constitution are these.

180. In view of its inaccessible nature and the difficulty of communications, the mountainous interior of Ceylon which forms the Kandyan Provinces retained a position of independence long after the rest of the Island had passed into the control, first of the Portuguese, then of the Dutch, and ultimately of the British: and the Kandyan Kingdom finally became subject to the British Commonwealth, not by right of conquest as did the remainder of Ceylon, but as a result of a Treaty by which its integrity, liberty, institutions, laws and religion were to be guaranteed by the British Government, which undertook "... to devote Kandyan revenue to the improvement and administration of the Kandyan Kingdom alone and to uphold the dignity and power of the Kandyans as a nation."* Everything done since in consequence of the administrative union of the Kandyan Kingdom with the rest of Ceylon which followed the Royal Commission of 1831-32 has, according to the Kandyan view, been done in violation of the Treaty of 1815: and the subsequent constitutional developments up to and including the Donoughmore Constitution of 1931, which have taken little or no account of the special position and rights of the Kandyans, have amounted to a breach of faith by the British Government. Thus any new Constitution which may be promulgated should, the supporters of the Kandyan Claim consider, be designed to rectify this situation by restoring the 1815 Convention as modified by the 1818 Proclamation to its full effect, except in so far as variations from it may be freely accepted by the Kandyan people.

181. It is scarcely necessary to emphasise that in a historical controversy of long standing like this, there is much to be said on both sides: and while we feel considerable sympathy with a great deal of the Kandyan case, we are also not unaware of the arguments against the legalistic interpretation of their position upon which some Kandyans are inclined to base exaggerated claims. In any case, we do not consider that any useful purpose would be served by our making an attempt to mediate in this controversy, even if we were competent to do so, and we can only reiterate the plea so eloquently advanced by the Donoughmore Commissioners, that the Kandyans should take refuge in the past no longer, but should bend their energies rather towards the realities of the present and the potentialities of the future.

182. More important than the fruitless discussion of the rights and wrongs of the legal position—which can only be of academic interest, since the Kandyan Provinces have now been administered as one with the rest of Ceylon for over a hundred years—are the practical issues facing the Kandyans to-day. We cannot doubt from the evidence before us that, especially in the latter half of the 19th century, the establishment of the plantations reacted unfavourably on the Kandyan landowners. By various means which, to say the least, were prejudicial to the latter, land was acquired to form large estates, first for the planting of coffee, and later tea and rubber. The inevitable backwardness of a hill-country population as compared with its maritime neighbours was accentuated by the spread of educational, health, agricultural and economic facilities through the relatively thickly populated and accessible low country much earlier and on a far larger scale than was possible in the interior. The result is that to-day the Kandyan peasantry labour under serious social and economic disabilities as compared with their more fortunate fellow agriculturalists of the low country. Moreover, the plantations established in their territory, while they deprived the Kandyan peasantry of some

* Donoughmore Report (Cmd. 3131), page 104 (Quotation from Memorial of the Kandyan National Assembly).

of their land and resources, brought no direct compensatory benefit in the way of employment, as for various reasons imported Indian and not local Kandyan labour was used by the planting industry.

183. Thus the Kandyan problem, as we see it, is largely social and economic, and its solution will be found not in the restoration under the Constitution of a privileged status which may or may not be justified by the 1815 Treaty, but in the removal of the practical disabilities under which the Kandyans still suffer as compared with the Low Country peoples, i.e., in the rehabilitation of their peasant agriculture and the improvement of their educational and health facilities.

184. We understand that a proposal has been put forward in Ceylon for an extension of local government activities by the establishment of Provincial Councils under whose direction many administrative, social service and development activities now carried on by the Central Government would be locally controlled within provincial areas. It seems to us that such a system would provide favourable opportunities (given sufficient funds) for the Kandyan Provinces to undertake the programmes of rehabilitation and development work which are required to enable them to regain their ancient prosperity, and we trust that the Government of Ceylon will see its way to provide the necessary funds to augment such local revenues as may be available to the Provincial Councils.

185. These are, however, clearly not problems which can be solved by the incorporation of special provisions in the Constitution, and we must leave it to the people of Ceylon, to whom full responsible government in all matters of internal civil administration is to be granted, to take the essentially administrative measures required to remove the Kandyan grievances. It may here be mentioned that few, if any, of the Kandyan witnesses appearing before us opposed the grant of further concessions in the direction of full responsible government. To those Kandyans who desire His Majesty's Government at one and the same time to grant self-government to Ceylon and to stipulate nevertheless that self-government must operate in a particular way to the special benefit of one section of the community, we would point out the essential inconsistency of their attitude—which is, incidentally, not without its counterpart among other minority communities. With the best will in the world we cannot consistently recommend self-government for Ceylon and at the same time prescribe administrative measures for the future Government of Ceylon to carry out. We can only express the hope that future Governments will be able to rise above differences of community and caste and look rather to the well-being of Ceylon as a whole, in which is involved the removal of the disabilities of backward or depressed sections of the population by whatever special measures may be required.

186. There are two further matters to which reference must be made in this Chapter. The first is the question of Kandyan representation in the Legislature. It would seem logical that, since the Kandyans feel that they have special problems of their own, they should elect members of their own community to the Legislature who would be in a position to put forward the Kandyan point of view and impress upon the Government the necessity for special measures to redress Kandyan grievances. Yet the evidence put before us shows that, in the General Election of 1931 16 constituencies with primarily Kandyan electorates returned, not 16 Kandyan representatives, but only 10, the remaining successful candidates being non-Kandyans. In the General Election of 1936, 8 Kandyans were returned, and to-day there are 8 in the Legislature. The reason given to us to account for these surprising results is that the Kandyan electorate is so poverty-stricken and so educationally backward as to be easily open to bribery and intimidation.

We deal with the question of electoral abuses elsewhere in our Report*; but while we are not prepared to deny that these factors have operated to some extent, we do not think that they explain the success of non-Kandyan candidates whose resources and influence would not be sufficient to indulge in these practices on a large scale. The inference is, we feel, either that there are considerable numbers of Kandyan electors who are indifferent to the specifically Kandyan programme, or that the quality of the Kandyan candidates is low. Neither argument supports the claim for the reservation of special seats for the Kandyans in the Legislature. The former might be taken at first sight to confirm the view that universal suffrage was granted too soon for the Kandyans, yet none of the Kandyan witnesses who appeared before us favoured the restriction of universal suffrage now that it has been given, and many seemed to share the view held among large sections of the population that universal suffrage has, on the whole, operated to the benefit of the community in general, and especially of the poorer classes. At all events, it is clear that under a Constitution providing for full responsible Government in all matters of internal civil administration, those who advocate special concessions to the Kandyans must first convince their own people before they can hope to gain their ends. This is one of the reasons—there are many others—why we unhesitatingly reject a solution of the Kandyan problem suggested to us, as to the Donoughmore Commissioners, that Ceylon should be divided into three self-governing States, Kandyan, Low Country Sinhalese, and Tamil, under a Central Federal Government.

187. The second point we wish to mention here is the recommendation of the Donoughmore Commissioners that " There should be occasional meetings of the State Council in Kandy and Jaffna."† While so far as we are aware there is nothing in the Ceylon (State Council) Order in Council, 1931, or in the Standing Orders of the State Council which precludes such meetings, this recommendation has apparently never been carried out, no doubt because, however desirable in itself, it has never been a practical proposition. We therefore consider that the idea of the Legislature meeting anywhere else than in Colombo should now be abandoned, for whatever advantages might have been claimed for such an arrangement will disappear with the improvements in communications which the post-war era will undoubtedly bring.

CHAPTER X

THE FRANCHISE

188. From the preceding chapters it will be apparent that the problem of the Ceylon Constitution is essentially the problem of reconciling the demands of the minorities for an adequate voice in the conduct of affairs—so as to ensure that their point of view is continuously before the administration and that their interests receive a due measure of consideration—with the obvious fact that the constitution must preserve for the majority that proportionate share in all spheres of Government activity to which their numbers and influence entitle them. The distribution of political power between the various communities is determined by the extent of the franchise (with which is connected the question of immigration), and by the method of representation. We shall consider these questions in this and the following chapters.

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* *See* paras. 243–248. † Donoughmore Report (Cmd. 3131), pages 107–8.

189. To-day the inhabitants of Ceylon possessing Ceylon domicile of origin* enjoy universal franchise on conditions similar to those obtaining in the United Kingdom, i.e., the elector must be a British subject, 21 years of age, and resident for a short and continuous period in the relevant electoral district.

190. In 1924 the number of registered electors was 204,997 or 4 per cent. of the total population of five millions. At the date of the first election under the Order in Council of 1931, the electorate had increased to over one and a half million, and in 1936, when the second election was held, the electorate was about two and a half million. The registers, as revised in 1940, contained a total number of 2,635,000 electors.

191. This very large increase in the electorate resulted from the recommendation of the Donoughmore Commissioners, which was implemented with certain alterations by the Ceylon (State Council Elections) Order in Council, 1931, as amended by the Ceylon (State Council Elections) Amendment Orders in Council, 1934 and 1935. It was the view of certain witnesses that the grant of universal suffrage to Ceylon in 1931 had been a grave error and had led to " wholesale corruption, intimidation, sale of ballot papers and the election of unworthy representatives ", and they were of opinion that, in view of the widespread illiteracy and ignorance of the electorate, literacy or educational tests should be imposed.

192. Literacy formed one of the conditions of qualification for the franchise under the Constitution preceding the Constitution of 1931, and the Donoughmore Commissioners stated† that the retention of that qualification had given them more concern than any of the other conditions relating to the franchise. After careful consideration, they decided that " literacy should not remain as one of the qualifications for electors at elections for the State Council."‡ This recommendation was supported by the Governor, Sir Herbert Stanley§ and was subsequently adopted by His Majesty's Government, subject to a modification made by the Ceylon (State Council Elections) Order in Council, 1931, which we shall presently describe.

Had a literacy test been imposed under the 1931 Constitution, it appears from such figures as are available that about half the electorate would have failed to obtain the franchise. We have not been able to procure any accurate statistics of literacy at the present time, but, despite the considerable advance in education since 1931, we have reason to think that the proportion of electors, who through no fault of their own have not had an opportunity of acquiring literacy, is still very considerable. Accordingly, we share the views expressed by the Donoughmore Commissioners and Sir Herbert Stanley, and are not prepared to impose a qualification which would deny to a large number of " humble people the political status of their more fortunate fellows."‖

193. Similar considerations apply to an educational test and, in any event, the formulation of tests adequate to secure the object which their advocates have in mind, and the administrative difficulties of operating them would, in our judgment, be insuperable obstacles to their adoption.

194. We are satisfied that, despite the abuses to which we shall refer, the grant of universal suffrage has been amply justified by the considerable

* The position of those who do not possess Ceylon domicile of origin will be discussed later.

† Donoughmore Report (Cmd. 3131), page 85.

‡ Donoughmore Report (Cmd. 3131), page 87.

§ Sessional Paper XXXIV of 1929.

‖ Donoughmore Report (Cmd. 3131), page 86.

progress made since 1931 in the sphere of social reform, of which we have already given an account in Chapter VI. We think it very doubtful whether, on a more restricted franchise, the needs and aspirations of the poorer classes would have met with similar recognition. Indeed, this was admitted even by witnesses who advocated the restriction of the franchise and alleged that the evils from which Ceylon was suffering were due to the kind of representative sent to the State Council as a result of the mass vote; for, as one of them remarked, " the type of representative that is returned by the masses will necessarily look after the masses."

195. An ingenious and in many ways attractive scheme of indirect election was put before us. Its main object was to obviate the disadvantages occasioned by the lack of a party system comparable with that of the United Kingdom. The witness who gave evidence in support of it held the view that the average elector in Ceylon, particularly if he was illiterate, lacked the capacity to decide between the rival claims of candidates from distant localities and was bewildered by the cries and tumult of a General Election. But he could be depended upon, under a system of indirect election, to choose a worthy person from among those with whom he lived in his village, to represent him in a College of Electors charged with the duty of selecting a Member of Parliament for the whole constituency. It was therefore proposed that the electorates should consist of a number of electoral sub-divisions, each containing about 300 electors and constituted so far as possible in a homogeneous unit, and that each unit should return one of its members to the Electoral College.

196. The advantages claimed for this procedure were that the member of the Electoral College would have the confidence of the village and would be of a standard of intelligence adequate to appreciate the merits of the competing Parliamentary candidates, that he would closely reflect the views and inclinations of the electorate, that the voter would be exercising a function which he had the ability to perform instead of being called upon to evaluate the worthiness of persons with whom he was not in contact, that the heat and bitterness of a General Election would find little expression in an Electoral College, and that there would be far less scope for the corrupt practices by which Parliamentary elections in the Island had often been disfigured.

197. It was made clear to us that the scheme was not recommended as a permanent feature of the Constitution of Ceylon, but that with the development of the party system indirect election would give way to direct, and that it was on the whole more suitable for rural than urban constituencies.

198. We agree that there is considerable force in the contention that, pending the emergence of party policies and organisations, the average peasant elector tends to be influenced mainly by his personal knowledge of the candidate, and that when he finds himself unable to assess the qualities of a candidate who is a complete stranger to him, cries of race, caste or religion make a deeper impression upon him than they would in the ordinary concerns of his daily life.

199. After full consideration of its advantages, we do not feel able to recommend the adoption of this system. It might possibly have been appropriate in 1931, as a preliminary to the introduction of direct election combined with universal suffrage, but after fourteen years' experience of direct election we think it would be generally interpreted by the electors as a retrogressive step and an obstacle to the political advancement of the people.

200. It may be true that the peasant, though undoubtedly anxious to return a worthy person to represent him in Parliament, is not so capable of judging between two or more candidates from far off districts as between one

elector and another in his own village. But we are convinced that, with all its difficulties and liability to abuse, the existing system is a better method of preparing both electors and candidates for the eventual emergence of parties and the substitution of social and economic for communal issues.

201. It should also be noted that the scheme for the delimitation of electoral districts in S.P.XIV* contemplates that " on the average each constituency would be about half the size of the present constituencies, but in the less thickly populated Provinces it would be much less than half." An alteration of this nature would serve to facilitate contact between the candidates and the electorate.

202. As already mentioned, the recommendations of the Donoughmore Commission regarding the franchise were adopted by His Majesty's Government and translated into the Constitution with certain material alterations, some of which had and still have an important effect on the enfranchisement of a substantial section of the population, namely the Indian immigrant unskilled labourer, for, as will appear later, the questions of immigration and franchise are closely connected.

203. The Donoughmore Commissioners recommended that a qualification of five years' residence in the Island (allowing for temporary absence not exceeding eight months in all during the five-year period) should be introduced in order that the privilege of voting should be confined to those who have an " abiding interest " in the country or who may be regarded as " permanently settled " in the Island. They described this condition as " of particular importance in its application to the Indian immigrant population."† When in 1929 the Donoughmore Report was debated in the Ceylon Legislative Council, the principle of abiding interest and permanent settlement as a condition of the franchise met with general acceptance, but the method of its application caused acute controversy.

204. The Indian labourers amounted, with their dependants, to about 900,000, of whom between 650,000 and 700,000 were—and still are—mainly concentrated on up-country estates in Sinhalese, and particularly Kandyan; areas. It was feared that an unrestricted extension of the franchise to these Indians would swamp the Sinhalese vote in those parts of the country; and as Sir Herbert Stanley pointed out‡ " it is intelligible . . . that the opposition to the wholesale enfranchisement of Indians should emanate principally from the Sinhalese community." Accordingly, the Sinhalese demanded that the test of past residence formulated by the Donoughmore Commission should be reinforced by a further indication of intention to remain in Ceylon and become a permanent part of the Island's population.

205. To meet this demand, Sir Herbert Stanley proposed that domicile (either of origin or of choice) should be made the standard test, and that for domiciled and undomiciled alike the preliminary requirements should be " British nationality, a minimum age qualification of 21 years for persons of either sex, the absence of mental disability or criminal antecedents, and the condition of residence for six months of the eighteen immediately preceding the preparation of the register in the electoral district to which the register relates."§ He was of opinion that under this system practically all Ceylonese, and quite an appreciable number of Indians and a few Europeans would become entitled to registration.

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* Para. 7 of the Explanatory Memorandum.
† Donoughmore Report (Cmd. 3131), page 87.
‡ S.P. XXXIV of 1929, page 13, para. 32.
§ S.P. XXXIV of 1929, page 13, para. 35.

206. For the undomiciled, he proposed two alternative qualifications, either a literacy and a property qualification as under the 1924-1931 Constitution, or a Certificate of Permanent Settlement, to be granted to the applicant by a duly appointed officer, the condition for the grant being evidence of five years' residence and a declaration either of permanent settlement in the Island, or of intention to settle permanently, and a renunciation of any claim to special protection by any Government other than that of Ceylon or to special statutory rights or privileges not enjoyed by other residents.

207. We are satisfied from our perusal of the contemporary despatches and debates, and from evidence furnished to us, that if the qualification of these Indian immigrants for the franchise had depended solely on the condition of five years' residence in the Island as recommended by the Donoughmore Commissioners, the Constitution of 1931 would not have been accepted by the Legislative Council. This was clearly the conclusion reached by the Secretary of State for the Colonies (Lord Passfield) in his reply of 10th October, 1929, to the Governor, where he says:—

> " I cannot fail to recognise that, unless some material modification of the proposals relating to the franchise can be announced, the prospect of general acceptance of the scheme and of active co-operation in its working if it is put in force is remote. You have fully discussed in your despatch the main outlines of the controversy which has arisen, and in paragraph 35 you submit proposals for modification of the recommendations of the Commission, which appear to me not unfair in themselves and to be likely to command a large measure of acceptance. I propose to adopt your suggestions under which, subject to special provisions being made for British subjects not domiciled in Ceylon being allowed to qualify for the franchise in accordance with the conditions of the present Constitution, domicile should be the standard test for inclusion on the Register. The definition of ' domicile ' involves legal questions of much difficulty and complexity, and the qualification would hardly be suitable if it stood by itself. The difficulty would, however, be overcome by your proposal that the applicant, provided he can furnish satisfactory evidence of five years' residence, should be qualified for the vote on the production of a certificate of permanent settlement granted by some duly appointed officer. I propose that provision should be made for this qualification in the Order in Council."*

208. It was on this understanding that the Legislative Council, by a majority of 19 to 17 votes,† accepted the Constitution of 1931. The necessary provision for special qualification by literacy and income and property, or by the Certificate of Permanent Settlement, was made in Clauses 8 and 9 respectively of the Ceylon (State Council Elections) Order in Council, 1931.

209. It should here be pointed out that this modification of the Donoughmore Commission's recommendation excited considerable apprehension in India and that representations were made by the Government of India to His Majesty's Government protesting against any modification of the Commissioners' recommendation.‡ His Majesty's Government, however, replied that they would not feel justified in agreeing to any substantial modification of the proposals, which formed an essential part of the scheme of constitutional reforms accepted by the Legislative Council of Ceylon, and that these proposals did not seem to His Majesty's Government to involve any racial discrimination against Indians, whereas some of the Indian protests amounted in effect to a claim to a position of privilege rather than of equality.

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* S.P. XXXIV of 1929, page 24, para. 10.

† *See* para. 41.

‡ Sessional Paper XVI of 1930.

210. As a result of the operation of the Ceylon (State Council Elections) Order in Council, 1931, the number of Indians registered as electors in that year was about 100,000, as compared with 12,438 registered in the Indian electorate under the old Constitution—an increase of over 700 per cent.

211. Succeeding years, however, have not stifled the controversy over this matter. On the one hand the Sinhalese contend that the Elections Order in Council, 1931, was not framed in accordance with the undertaking to modify the recommendations of the Donoughmore Commissioners given to them by His Majesty's Government; and that the administration of it has been contrary to its spirit and intention. On the other hand, the representatives of the Indian community in Ceylon complain of the administrative efforts made to reduce the Indian voting strength, reiterate the protests against the undertaking given by His Majesty's Government, and claim the grant of the franchise to the Indian community on a footing of equality with the rest of the population.

212. Apart from any criticism that might be directed against the drafting of the relevant clauses of the Elections Order in Council, we are satisfied that it was intended to carry out the undertaking in question. But the complaint that the Sinhalese make against the administration of the Order seems to us to rest on surer foundations.

213. Since 1931 the number of Indian estate workers on the Register appears to have rapidly increased. In 1936 the figure was estimated at 145,000 and by 1938, out of a total population of about 670,000 Indian estate workers and their dependants, more than 170,000 had been registered as electors; in 1939 this figure exceeded 225,000. It is probable that one of the reasons for this substantial increase was the anticipation of a General Election in 1941—it was subsequently postponed on account of the war—and the resulting greater interest taken in registration by prospective candidates and electors.

214. In 1938 representations were made by the Sinhalese to the Governor, Sir Andrew Caldecott, that the regulations governing the Indian franchise had not been properly implemented. In his Reforms Despatch the Governor stated that it was not a question of constitutional reform but of tightening up the procedure and, as such, would receive his careful attention.

215. In 1940, the procedure on revision of the registers was altered in regard to the qualification of domicile of choice* and instructions were given that no facts relating to the question of domicile were to be accepted unless they had been checked either by a Registering Officer or an Enumerator, and no one was to be registered who was not orally examined. From 1940 onwards the figures of registration of these Indians declined and the number in 1943 amounted to about 168,000—the last available figure.

216. A study of the published official reports on electoral revision† since 1940 discloses two interesting features. The first is that about 40 per cent. of the Indians in electoral districts other than Colombo, whose names appeared in the preliminary list of electors, failed to put in an appearance before the Registering Officer for examination. Among the main reasons given by the Registering Officers for non-appearance‡ were lack of interest and apathy; a General Election was no longer imminent; a general apprehensiveness that the enquiry had something to do with repatriation to India (this was reported as a reason in 1940, but as a result of fresh instructions given to Registering Officers it does not appear to have contributed substantially to abstention from attendance at the enquiries in 1941)§; and reluctance to be specific in regard to future intentions.

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* Sessional Paper III of 1941.
† Sessional Papers III and VII of 1941, and Sessional Paper IV of 1942.
‡ Sessional Paper III of 1941.
§ Sessional Paper IV of 1942.

217. The second feature is that practically all those who appeared for examination and were successful in establishing their claim to registration obtained their qualification in respect of domicile—mainly domicile of choice—and only a few hundreds in respect of the Certificate of Permanent Settlement. Considering that this Certificate was devised in order to overcome the difficulties and complexities attendant upon application for registration in respect of domicile, it is remarkable that the Indian estate workers have made so little use of it.

218. We were informed that one of the reasons was their fear that, by applying for and obtaining the Certificate, the applicants would relinquish their right to any protection which they might otherwise expect from their Home Government. But whatever the reason, it is apparent that these workers have been disinclined to rely upon Article 9 of the Elections Order in Council dealing with the Certificate of Permanent Settlement, which was designed expressly for their benefit, and, despite the legal difficulties, have preferred to rely upon Article 7, which confers the franchise on persons possessing domicile of choice, including five years' residence.

Although prior to 1940, figures specifying the number of registrations under each qualification for the franchise are not available, we cannot resist the conclusion that, until that year, a considerable number of these Indian workers were admitted to the franchise under an Article which, if correctly and strictly interpreted, would have made their admission difficult. That it was not interpreted in accordance with the intentions of those who framed the Article is probable, for otherwise it is not easy to appreciate the need felt for the device of the Certificate of Permanent Settlement, which was introduced to overcome the legal difficulties anticipated in proving domicile.

219. The fact, however, remains that since 1940, in spite of the tightening up procedure, substantial numbers of these Indians have acquired the franchise in virtue of domicile. The published returns of the registration of Indians do not differentiate, except as regards Colombo, between Indians resident on estates and elsewhere. But from a comparison of the returns for twelve electoral districts comprising a large number of estates, we have obtained the following figures.

220. The 1941 revision of electoral registers shows that out of some 34,000 Indians in these districts whose names appear in the Preliminary Lists of Electors, 17,500 or about 50 per cent. presented themselves for oral examination, and of these, about 12,000 or nearly 70 per cent. were registered in virtue of domicile. In 1942, out of a similar number on Preliminary Lists, less than 8,000 or about 23 per cent. were orally examined, of whom about 4,400 or nearly 60 per cent. were registered. In 1943, the names on Preliminary Lists totalled 39,600 About 11,000 or 28 per cent. were orally examined, of whom about 7,000 or 63 per cent. were registered.

Only about 2 per cent of registrations were obtained by means of the Certificate of Permanent Settlement, the remainder being in respect of domicile of origin or of choice—principally the latter.

221. It is probably safe to say that at least 80 per cent. of the Indians whose names appeared in the Preliminary Lists for electoral districts other than Colombo were either born in Ceylon or had resided in Ceylon for at least ten years, and it is not unreasonable to anticipate that in a comparatively short time most of them will, if they take the trouble to appear for oral examination, be regarded as having an abiding interest in the country, as permanently settled in the Island and as qualified for the franchise.

222. Meanwhile, the decrease in the number of those registered since 1939 (from 225,000 in that year to 168,000 in 1943), and the remarkable drop

between 1941 and 1943 in the number presenting themselves for oral examination, may be attributed partly to apathy and indifference—the General Election due to be held in 1941 was postponed—partly to apprehension occasioned by the new procedure of 1940, partly to numbers of electors having left the Island, and partly to the ban laid on further emigration by the Government of India in 1939—a ban substantially continued to the present day.

RECOMMENDATION

223. We recommend that universal suffrage on the present basis shall be retained.

CHAPTER XI

IMMIGRATION

224. The political status of Indians in Ceylon has become so closely interwoven with immigration from India that it is desirable to examine this question in some detail, particularly in view of Article 40 of S.P.XIV which seeks to except from the Bills which must be reserved for His Majesty's assent any Bill dealing solely with the prohibition or restriction of immigration into the Island.

225. Broadly speaking, the subject may be divided into three categories:—

(*a*) Immigration of unskilled labour from India. This constitutes, or at any rate has in the past constituted, a vital element in the economic life of Ceylon, and since the introduction of universal franchise has, by reason of the number of these immigrants, become an important political factor.

(*b*) Immigration from India of traders and skilled labourers. These persons are not so numerous as to constitute a major political problem, but are regarded in some quarters as a considerable menace to Ceylonese commercial interests.

(*c*) Immigration from the United Kingdom of persons connected with United Kingdom enterprise in Ceylon. Their economic importance is very great, but their number is small and is decreasing, so that in their case the main problem in relation to immigration legislation would be the right of re-entry of such persons who were in the Island when such legislation came into force.

These categories are not at present controlled by Ceylon, except as regards destitutes and vicious persons, but category (*a*) is controlled by the Government of India by Section 10 of the Indian Emigration Act No. 7 of 1922, which provides that " emigration for the purpose of unskilled work shall not be lawful except to such countries and on such terms and conditions as the Governor-General in Council by notification in the Gazette of India may specify." It is further provided that no such notification shall be issued unless it has been approved by each Chamber of the Indian Legislature.

226. A notification under Section 10 of the Act of 1922, authorising the emigration of unskilled labour to Ceylon, was issued in 1923, and emigration of unskilled labour to Ceylon continued under it until the autumn of 1939, when the Government of Ceylon, while giving some indication of their intentions but without affording the Government of India an opportunity to comment on their final proposals, began a policy of discontinuance of non-Ceylonese daily paid labour which had been employed in Government Departments. The object was both to Ceylonise the labour force and to relieve unemployment.

227. On 1st August, 1939, the Government of India revoked the notification above referred to and thereby placed a ban on the emigration of all unskilled labour from India to Ceylon, whether employed by the Government or by private employers. An exception was then made only in respect of the families and dependants in India of labourers in Ceylon. This ban has remained in force ever since its imposition in 1939, except to the extent that it was relaxed in 1942 so as to permit the return to Ceylon of Indian labourers then in the Island who might go to India on or after 1st September, 1942. The object of this relaxation, which was made by the Government of India after consultation with, but without the concurrence of, the Government of Ceylon, was to enable labour then in Ceylon to pay its customary visits to India for social and domestic reasons.

228. In November, 1940, a conference was held in Delhi between representatives of the two Governments to settle outstanding differences in connection with the franchise, domicile and status of Indians in Ceylon, the control of emigration to Ceylon and other cognate matters, as a preliminary to the examination of trade relations between the two countries. This conference was abortive. It broke down on the question of the status of Indian immigrants then in Ceylon. A period of considerable tension followed during which an Immigration Bill published in Ceylon in February, 1941, was given its second reading in the State Council at the end of March, and referred to a Standing Committee, where it has remained ever since. The Bill made no further progress in 1941 for two reasons:—

(*a*) The ban imposed by the Government of India prevented the immigration of unskilled labour from presenting an immediate political problem to the Government of Ceylon.

(*b*) An effort was being made to arrange another conference with the Government of India.

229. At the second conference, which took place in Colombo in September, 1941, the two delegations reached agreement on all points, including, *inter alia*, the Immigration Bill and the questions of franchise, Government employment and re-entry. Their Joint Report was signed on 21st September, 1941.*

230. In December of that year war broke out with Japan. At that time the Government of India had not communicated to the Government of Ceylon their decision as to the ratification of the agreement entered into by their delegates—they were not plenipotentiaries—but in February, 1942, the Government of India asked the Government of Ceylon to agree to postpone negotiations until the war was over. According to the Government of India, that involved the maintenance for the period of the war of the *status quo* as before the introduction of the Immigration Bill in Ceylon and the Government of India earnestly trusted that the Government of Ceylon would agree that that was the proper course to pursue in the best interest of the successful prosecution of the war.

231. The Government of Ceylon agreed to postponement until conditions favourable to the resumption of negotiations should return.† Subsequently, in February, 1943, the Government of India informed the Government of Ceylon that they had in effect decided to refuse to ratify the agreement entered into by their delegates. The situation has not materially altered since that date. The ban on the immigration of unskilled labour from India remains in force with the modification referred to in para. 227, and the Immigration Bill still remains in Standing Committee.

* Sessional Paper XXVIII of 1941.

† Sessional Paper III of 1943.

232. As already mentioned, we have found it necessary to describe this controversy at some length for two reasons, first, that it relates to the enfranchisement of large numbers of Indians registered in Ceylon; and, secondly, that it affects the proposals contained in Article 40 of S.P. XIV to exclude from the category of Bills which must be reserved for His Majesty's assent any Bills which deal solely with the prohibition or restriction of immigration into the Island or with the declaration or definition of the rights and privileges of citizenship.

233. In view, however, of the inconclusive state of the negotiations between the two Governments, the postponement of further consideration of the matter during the continuance of the war with Japan, and the possibility of re-opening conversations before the end of the war, we think it desirable to confine our comments upon the situation which has arisen within narrow limits and to content ourselves with the following observations.

234. Notwithstanding the subsequent refusal of the Government of India to ratify the agreement of its delegates, that Government has admitted that " Ceylon has the right to determine the future composition of her population by the imposition of such restrictions as she may deem necessary upon the entry of newcomers."* It was on this footing that the Ceylon Delegation entered the conference of September, 1941.†

235. We think that as a general principle it is necessary to concede this right to any country possessing full responsible government in all matters of internal civil administration, and we are therefore prepared to endorse the proposal in S.P. XIV that the Government of Ceylon should have the power to prohibit or restrict immigration into the Island and that a Bill dealing only with that subject should not come within the category of Bills which must be reserved for His Majesty's assent.

236. We feel, however, that it is necessary to make this qualification. It should not, in our judgment, be competent to the Government of Ceylon unfairly or unreasonably to prohibit or restrict the re-entry of persons normally resident in Ceylon, at the date of the coming into force of an Immigration Bill. We recommend that the new Constitution should enable the Governor-General‡ to reserve an Immigration Bill if in his opinion its provisions regarding the right of re-entry of persons normally resident in the Island at the date of the passing of the Bill by the Legislature are unfair or unreasonable.

It may be argued that these persons would be protected by Article 3 (1) (*d*) of S.P. XIV, which proposes to include in the category of Reserved Bills " any Bill, any of the provisions of which have evoked serious opposition by any racial or religious community and which, in the opinion of the Governor-General, is likely to involve oppression or serious injustice to any such community." We think, however, that it is desirable to make the specific proviso that we have indicated.

237. As regards Bills dealing solely with the declaration of the rights and privileges of citizenship (Article 40 (*b*) of S.P. XIV), we think that a closer definition of the Bills which the authors of that Paper have in mind is necessary. We do not know what precise legal or juridical significance they attach to the term " citizenship," and it is to be noted that, in the correspondence with the Government of India regarding the negotiations of 1941, the Government of Ceylon complained that the Government of India

* Sessional Paper III of 1943.

† Sessional Paper XXVIII of 1941.

‡ **In any future reference in our report to the Governor of Ceylon under a new Constitution we shall describe him as Governor-General. We recommend (para. 348) that he shall bear that title.**

had substituted " the vague word ' citizenship ' (studiously avoided by the negotiators in their Joint Report) for the careful categorisation of rights."

238. To the extent, however, that the " rights and privileges of citizenship " are intended to relate to enfranchisement, we think that it should be within the competence of the Government of Ceylon to determine the conditions under which the inhabitants of Ceylon may acquire the franchise. The duty of the elected representatives to voice the claims and protect the interests of their constituents in all matters including " the rights and privileges of citizenship ", regardless of the community to which they belong, constitutes the real safeguard. The franchise itself is only a means to an end, and the end is to give people such a share of political power as may enable them to redress their grievances themselves. But their ability to do this involves the absence of any discriminatory legislation regarding the franchise, and an adequate measure of enfranchisement.

239. We therefore attach importance to:—

(i) the majority opinion of the Select Committee on Election Law and Procedure (S.P. XIV of 1938) that Article 9 of the Ceylon (State Council Elections) Order in Council, 1931, should remain unaltered;

(ii) the declaration of the Ceylon delegates at the conference of September, 1941, that " there is a body of Indians in Ceylon who, by birth and by long association have so identified themselves with the affairs of this country that their interests are no different from those of the indigenous population ";

(iii) the provision of Article 8 of S.P. XIV which proposes to prohibit the Parliament of Ceylon from making any law rendering " persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not liable, or conferring upon persons of any community or religion any privileges or advantages which are not conferred on persons of other communities or religions ";

(iv) Article 38 (1) (*d*) of S.P. XIV by which " any Bill any of the provisions of which have evoked serious opposition by any racial or religious community and which, in the opinion of the Governor-General, is likely to involve oppression or serious injustice to any such community " may be reserved by the Governor-General for His Majesty's assent.

We think that the new Constitution should contain clauses giving effect to these two Articles.

240. In view of the ban on emigration imposed by the Government of India in 1939, few of the Indian unskilled workers now in Ceylon can have been resident in the Island for less than five years. A large number have been born there and, under the new Constitution, if our recommendation is accepted, it will be within the power of the Government of Ceylon to regulate further admissions. Consequently, the Government of Ceylon will have the ability, as we feel sure it already has the desire, to assimilate the Indian community and to make it part and parcel of a single nation. But we must point out that any decision of the Government of Ceylon upon the conditions of the enfranchisement of the Indian unskilled workers will have an important effect on our recommendations regarding the terms of reference of the Delimitation Commission proposed in S.P. XIV and upon our approval of the distribution of electoral districts outlined therein.*

* Sessional Paper III of 1943, Document 17. *See also* para. 242 (ii) below.

241. From the chapter in our Report dealing with that matter (see especially paragraph 274), it will be apparent that, if anything in the nature of a harsh or restrictive policy regarding the enfranchisement of Indian unskilled labour were pursued, the basis of minority representation in the new Legislature would be materially affected and the number of Representatives available to protect the interests of Indian labour seriously diminished.

RECOMMENDATIONS

242. We recommend that:—

(i) Any Bill relating solely to the prohibition or restriction of immigration into Ceylon shall not be regarded as coming within the category of Bills which the Governor-General is instructed to reserve for the signification of His Majesty's pleasure; provided that the Governor-General may reserve any such Bill if in his opinion its provisions regarding the right of re-entry of persons normally resident in the Island at the date of the passing of the Bill by the Legislature are unfair or unreasonable.*

(ii) Any Bill relating solely to the franchise shall not be regarded as coming within the category of Bills which the Governor-General is instructed to reserve for the signification of His Majesty's pleasure.†

(iii) The Parliament of Ceylon shall not make any law rendering persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable, or confer upon persons of any community or religion any privileges or advantages which are not conferred on persons of other communities or religions.

(iv) Any Bill, any of the provisions of which have evoked serious opposition by any racial or religious community and which, in the opinion of the Governor-General, is likely to involve oppression or serious injustice to any such community, must be reserved by the Governor-General for His Majesty's assent.‡

CHAPTER XII

ELECTORAL ABUSES

243. Reference was made at the beginning of Chapter X to various abuses of the franchise which were adduced in evidence as grounds for its restriction. We have gone carefully into a number of instances to which our attention was directed and have studied the proceedings and findings of the Bribery Commission published in May, 1943,§ and have read judicial pronouncements in connection with various election petitions.

Without doubt, serious abuses have occurred, particularly at by-elections, but we are disposed to think that not only their extent, but also their effect have been somewhat exaggerated. These abuses can be divided into three main categories; the selling of ballot papers, the impersonation of voters, and violence and intimidation.

The selling of ballot papers

244. In consequence of the low level of literacy amongst a large section of the electorate, and the inability of a great many voters to recognise the names of the candidates on a ballot paper, the practice was instituted at the first

* *See* para. 332 (ii) (*b*) below.
† *See* para. 332 (ii) (*c*) below.
‡ *See* para. 332 (v) below.
§ Sessional Paper XII of 1943.

General Election and subsequently continued of allotting a colour to a candidate, and of providing ballot boxes corresponding to the colours. The voter, illiterate or otherwise, has to deposit his ballot paper in the appropriate box bearing the colour of the candidate of his choice. The voting is secret because the paper is not deposited in the box in the presence of the presiding officer, although he has the right from time to time to visit the boxes in order to satisfy himself that they have not been tampered with.

From the evidence we have heard, we have no reason to doubt that it has been a not uncommon practice for a voter to receive his paper, proceed to the ballot box, conceal the paper in his clothing and, instead of putting it into the box, leave the booth and sell it to an agent of one of the candidates who arranges for another voter to put it into the relevant box

245. To what extent this malpractice takes place, we are unable to say, but we doubt whether, at any rate in Parliamentary elections, it is or can be in many instances on a scale sufficient to affect the result. Nevertheless, we are satisfied that this form of corruption is practised and we have considered various counter-measures which have been suggested to us. Most attractive of these is the substitution for the coloured box of a ballot paper bearing the names of the candidates in colour. The advantage claimed is that the voter would easily recognise his candidate, by the colour, and after making his cross in the appropriate place would put his paper in the ballot box in the presence of the presiding officer. We were, however, informed by witnesses, upon whose experience and judgment we are disposed to rely, that a large number of voters would be unable to make a cross in the right place, or indeed, in any place, and that a very high percentage of spoilt papers, anything from 20 to 30 per cent., would result. We think that this risk should not be taken and, as it is reasonable to hope that before many years have passed, increased literacy will enable the great majority of voters to read the names of the candidates and vote for them in the normal fashion, we think it better not to disturb the present procedure but to rely upon stricter supervision and heavier penalties in the event of detection.

Impersonation

246. We are of opinion that the extent of this evil is overstated and, as in the case of the sale of ballot papers, we think that it can seldom take place to an extent sufficient to affect the issue. The best way in our judgment to defeat this malpractice is to have a larger number of polling booths, if possible one for every thousand electors, so that the candidates' representatives will have less difficulty in identifying the individual voter. The smaller electorates envisaged in S.P. XIV will help in this direction. It is also to be expected that with a return to normality after the war more time and money will be expended on the preparation of the electoral registers, with a consequential improvement in their accuracy.

Violence and intimidation

247. We are convinced that violence and intimidation, especially at by-elections, have been practised to a considerable extent, e.g., at the hearing of a petition arising out of a Parliamentary by-election held in October, 1943, the judge found that at one polling station " unmitigated hooligans had taken full control of affairs."

But the prohibition of the Court must be supported by the inhibition of the citizen. Real reform can only come from within, from the electors themselves, and depends on the development of a public opinion which unhesitatingly condemns such evils. It is our hope and expectation that the spread of education, the training of character in school and the increase of political experience

will do more than rules and regulations to create conditions inimical to the continuance of these malpractices.

" Quid leges sine moribus
Vanae proficiunt?"*

248. The existing provisions in regard to the franchise and election law generally are contained in the Ceylon (State Council Elections) Order in Council, 1931. We have studied the report of the Select Committee of the State Council on Election Law and Procedure† and are satisfied that the present law requires amendment in many particulars. But we do not propose to make any recommendations in regard to the amendment of the present law, for, as we have already indicated (para. 242 (ii)), we consider that the alteration of the law concerning the franchise and elections is a subject of internal civil administration and as such a matter for the local Legislature to determine.

CHAPTER XIII

REPRESENTATION

249. In any country possessing representative institutions and responsible Government, the problem of representation is of fundamental importance, particularly when the electorate is not homogeneous but, like the electorate of Ceylon, is composed of a number of communities differing from each other in race, religion, tradition, culture, education, customs, habits and language. It is therefore not suprising that, since 1833, when representation was first introduced into the Legislature of the Island, political relations between the various communities—Sinhalese (Low Country and Kandyan), Ceylon Tamils, Indian Tamils, Muslims (Moors and Malays), Burghers and Europeans, have been permeated by pressure from one or other or all of them for increased representation—for the purpose of securing a larger number of seats in the Legislature not so much for the people of the Island as a whole, as for one particular section compared with another. Of these sections, the Sinhalese, constituting about two-thirds of the population, were and are the most important; and of the minorities, the Ceylon Tamils, predominant in the Northern and Eastern Provinces, rank next in voting strength and influence.

250. This minority professes to have been reasonably content with its allocation of seats in the Legislative Council prior to the Constitution of 1931—the proportion of Ceylon Tamil members to Sinhalese varying from 1:2 to 2:3; and when, in the Legislative Council of 1912 to 1921 the elective principle was first admitted, there were 3 Ceylon Tamils to 3 Sinhalese in the Council. Thereafter, for a period of two years, under the Ceylon (Legislative Council) Order in Council of 1921, as a result of an experiment in territorial representation based on Provincial divisions, the number of Sinhalese members was more than quadrupled, while the number of Ceylon Tamil members remained the same. The latter protested, and under the Ceylon (Legislative Council) Order in Council, 1923, His Majesty's Government substituted a scheme of representation which restored the ratio of 1 Ceylon Tamil to 2 Sinhalese. According to the evidence of the All-Ceylon Tamil Congress, the Constitution which came into being in 1924 functioned very successfully until 1931. It was also pointed out to us that the allocation of seats between the two communities (Sinhalese and Ceylon Tamils) was acceptable to the Sinhalese majority, for in 1925 representatives of the Ceylon National Congress and of the Ceylon Tamils entered into a pact by

* Horace, Odes III, 24.

† Sessional Paper XIV of 1938.

which, *inter alia*, they agreed " that as regards the Legislative Council the representation of the people of the Northern and Eastern Provinces and of the Ceylon Tamils in the Western Province and the territorial representation of the rest of the Island in any future Constitution should be in the proportion of 1:2 as at present."

251. Thus, up to 1931 the representation of the communities in Ceylon was frankly communal and, in the view of the Ceylon Tamil spokesman, the Donoughmore Commissioners' proposal to substitute a purely territorial scheme of representation was a disaster to the minorities and a political windfall to the Sinhalese majority. The scheme recommended by the Donoughmore Commissioners as subsequently modified and embodied in the Ceylon (State Council) Order in Council, 1931, resulted in more than doubling the number of the territorially elected Members, but left the two Tamil Provinces —the Northern and Eastern—to return no more than 7 Members, i.e. the same number as were returned between the years 1924 and 1931.

252. To-day, the 50 territorially elected Members in the State Council are distributed as follows:—

Sinhalese (Low Country and Kandyan)	39
Ceylon Tamils	8
Indian Tamils	2
Muslims	1

so that the pre-1931 ratio of 1 Ceylon Tamil to 2 Sinhalese has been changed to a ratio of nearly 1 to 5 in favour of the latter, who now enjoy a majority over the combined minorities, including 8 Nominated Members, of 20 in a House of 58.*

253. Our attention was drawn by nearly all the minority witnesses to certain despatches from the late Duke of Devonshire (Secretary of State for the Colonies 1922-24) to the Governor of Ceylon, Sir William Manning, in connection with the Constitutions of 1921 and 1924, and particular reliance was placed on the following passages:—

Despatch dated 11th January, 1923.

" The Ceylon (Legislative Council) Order in Council, 1920, under which the existing Legislature has been constituted, provides that it shall consist of 23 Unofficial and 14 Official Members. The selection of these 23 Unofficial Members has been so arranged that, while every community shall be represented in the Legislative Council, and while there is a substantial Unofficial majority, no single community can impose its will on the other communities if the latter are supported by the Official Members.

If, on the other hand, these Unofficial Members had been elected by purely territorial constituencies, the Sinhalese community would almost certainly have been a majority (disproportionate even to their numerical superiority in some cases) over all other sections of the Legislative Council, including the Government."

Despatch dated 22nd January, 1924.

" So long as the several communities in Ceylon remain convinced, as they appear now to be, of the divergency of their interests in many important matters, so long must some provision be made for the maintenance of communal representation in the Legislative Council."

* The total number of Members of the State Council is 61, but the three Officers of State have not the right to vote. The Speaker of the Council is a Tamil.

The All-Ceylon Tamil Congress Scheme

254. These passages were cited in support of a scheme for " balanced representation ", submitted to us by the All-Ceylon Tamil Congress and endorsed by a number of other minority witnesses. The main purpose of the scheme was to prevent the domination in the Legislature of any one community over another, in conformity with this principle, viz., that no single community should be able to impose its will on the other communities; and it was proposed that the voting powers in the Legislature should be " based on a balanced scheme of representation that would avoid the danger of concentration of power in one community but would ensure its equitable distribution among all communities and the people as a whole."

The All-Ceylon Tamil Congress advocated that, in order to attain this position, the Island should be divided into 100 territorial constituencies for an assembly of 100 members, and that of these constituencies 50 should be demarcated for the election of members to fill 50 general seats, while the remaining 50 should be allocated to members of the minorities (25 to the Tamils—Ceylon and Indian—and the rest to the other minorities).

It was pointed out in discussion that if 50 seats were assured to the minorities but the remainder left open to anyone to contest, the Sinhalese, who had always been and still were the majority group, might, by the loss of one or more of these seats, be converted into a minority. Accordingly, the scheme was amended to reserve these 50 seats for the Sinhalese in the same way as the other 50 seats were reserved for the minorities.

255. This scheme has been widely publicised in the Island under the title of " Fifty-fifty ", and the following advantages were claimed for it:—

(*a*) The domination of any particular community in a country with a conglomerate population would be prevented, and self-government would become a reality for all racial communities in the Island.

(*b*) The minorities would be freed from the feelings of " subservience or frustration," which resulted from being heavily outnumbered in the Legislature.

(*c*) Purely territorial representation, which meant simply numerical representation, could only result in placing in power a permanent racial majority that no appeal to the electorate was capable of altering. The present system made an alternative Government impossible and consequently had the effect of making those in power overbearing and autocratic. " Balanced representation " provided the only corrective.

(*d*) Such a scheme would help to compensate for the absence in Ceylon of any Party system on Western lines. Where representative government was based, as in the United Kingdom, on the Party system, public opinion and the good sense of the Party in power set a limit to despotic action by a majority. The realisation by the Government and its supporters that the Opposition was an alternative Government ever on the alert and ready to assume power by constitutional means " had no parallel in Ceylon.

(*e*) The scheme contained the seeds of growth and was a natural evolution from the form of government in existence before the Donoughmore " interlude," and a natural extension of past tendencies.

256. We are not inclined to agree that the system of representation recommended by the All-Ceylon Tamil Congress contains the germs of development, and we do not regard it as a natural evolution from the Constitutions of 1921 and 1924. On the contrary, we should describe a system which purported to re-impose communal representation in the rigid form contemplated, as

static rather than dynamic, and we should not expect to find in it the seeds of a healthy and progressive advance towards Parliamentary self-government.

We are of course well aware that, unless and until parties in Ceylon become divided on social and economic, in place of racial, lines, a minority will have no reason to rely on the swings to the right or left that occur in Western Democracies and, consequently, will have little expectation of taking over the reins of government. Despite the proposal in S.P. XIV for a re-distribution of electoral districts, which we shall presently examine, we are under no illusion as to the likelihood of a speedy reversal of the majority's present predominance in the Legislature. But it seems to us that under the " Fifty-Fifty " scheme each General Election will inevitably produce a Legislature of the same complexion as its predecessor, and we cannot recommend a stereotyped cast-iron division of the communities from which it would, in our judgment, be very difficult, if not impossible, ever to develop a normal Party system. But apart from a general consideration of this nature, we find it difficult to see how any stable Government could be formed or any head of a Government be able either to frame a policy or carry it out in a Legislature so constituted.

257. We think it is highly probable that if the All-Ceylon Tamil Congress scheme were adopted action would be taken by the Sinhalese which would be by no means acceptable to the advocates of balanced representation. In a Legislature composed of 50 Sinhalese and 50 members of the minority groups, the obvious course for the largest homogeneous group to adopt in order to recover its commanding position would be to make a pact with one or other of the minorities and thereby obtain once more a working majority for itself. No doubt the result would be advantageous to whichever section of the minorities was induced to co-operate and, so long as the pact endured, the support of the minority group in question would be made worth its while. But the other minorities would be left to suffer the feelings of " subservience or frustration " with which, according to the Ceylon Tamil spokesman, they are at present afflicted, and it might well be that the existing majority group, exacerbated by the statutory deprivation of its electoral predominance in the country, would be much less inclined than it is at present to pay regard to minority interests.

258. This possibility was present in the minds of the All-Ceylon Tamil Congress, for their memorandum stated as follows:—

> " With the minorities as against the majority precariously balanced, any supporting group will really become the decisive factor. The majority group will naturally be much more cohesive than any other and if it can anyhow attract a single group or a number of individuals from different groups of the minorities, it can always retain power. In such a case the majority group and its supporters will become the new oppressors."

It was apparent, therefore, that the All-Ceylon Tamil Congress attached more importance to representation in the Executive than in the Legislature. For that reason they claimed that " communal non-domination should be translated into the Executive; for a balanced Legislature with an Executive that leaves power in the hands of any one community would be a mere delusion and a snare." Accordingly they proposed that:—

(*a*) The present method of government by Executive Committees should be abolished and its place taken by a Council of Ministers so composed as to " enable the minorities to take their due share in the government of the country ".

(*b*) The Governor should choose the Council of Ministers in consultation with leaders of the various communities in the Legislature, but that it

should be provided by Statute that less than half of the members of the Council of Ministers should be chosen from any one community.

(*c*) The Council of Ministers should elect one of its members to be Leader of the House.

(*d*) The Governor should have the right to preside at all meetings of the Council and the Leader of the House should be Chairman of the Council and preside over it in the absence of the Governor.

259. These proposals seem to us to be open to grave objection. The result of the statutory injunction to be laid upon the Governor regarding his choice of Ministers would, according to the evidence given by the exponents of the scheme, be that a Council or Cabinet of, say, ten Ministers would consist of four Sinhalese, two or three Tamils, one or two Muslims and perhaps a European or Burgher. Thus, the Sinhalese group would get less representation in the Cabinet than the " Fifty-fifty " system would justify. We think that any attempt by artificial means to convert a majority into a minority is not only inequitable, but doomed to failure. We have received no evidence to convince us that such a method would produce the collective responsibility of the Ministers to the Legislature which the witnesses professed to favour and the absence of which has proved detrimental to the successful working of the present Constitution.

260. Our attention was drawn to the Constitutions of the Provincial Governments in India, where the Instrument of Instructions to the Governor enjoins him " to use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature those persons (including so far as is practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature " and to " bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers." But it was submitted to us that in all cases where, in response to such an endeavour, minority members had been included in the Council of Ministers, they had been selected, not so much because they represented a minority community as because they were agreeable to the majority in the Council, and not considered to be likely to give trouble to their colleagues. The All-Ceylon Tamil Congress maintained that the inclusion of minority members in any Council of Ministers or Cabinet which might figure in the new Constitution should be mandatory.

261. It does not, however, seem to us likely that any Council of Ministers or Cabinet formed under such circumstances would accept collective responsibility for its actions, nor was our attention directed to any precedent for the successful working of a compulsory coalition of the nature indicated. But it is not because of the novel character of this proposal that we reject it: it is because of its inherent defects. For all political experience suggests that men will work with other men when they are agreeable to them, or are men of their own choice, or under the stress of very grave emergency, but not otherwise. But co-operation and willingness to accept joint responsibility are most unlikely amongst colleagues who are forced upon each other by Statute. We are, however, strongly of the opinion that, until parties develop in Ceylon on lines more akin to Western models, the leader of the majority group would be well advised, in forming a Government, to offer a proportion of the portfolios to representatives of the minorities and, in selecting those representatives, to consult the elected members of the group or groups to which they belong.

262. We have no reason to suppose that the head of the Ceylon Government would be devoid of the qualities and attributes of statesmanship, and indeed, if the scheme proposed in S.P. XIV for the delimitation of constituencies has

the result which we understand it is intended to have, common political prudence, apart from statesmanship, will commend to him the course we have suggested. For as will be seen later, the additional weightage which it is proposed to give to the minority communities may reasonably be expected to diminish the present disparity between the majority and minority groups; and the majority group itself cannot be counted on always to remain of the same mind and the same allegiance. There is by no means complete unanimity among the Low Country Sinhalese and the Kandyans as to their respective interests and aspirations, and the growth of left-wing opinion already constitutes a potential solvent of racial or religious solidarity. These considerations must inevitably present themselves to any Leader desirous of obtaining for his Government a stable and reliable basis of support in the Legislature.

263. Considerable stress was laid upon the proposal that the Council of Ministers should elect the Leader of the House, but it seems to us improbable that this procedure would promote the choice of the most suitable person, for we think that negative rather than positive qualities would commend themselves to a body composed of compulsorily associated elements of the various communities. In any event, as in the case of the Legislature, the largest homogeneous section in the Council of Ministers would have every inducement to secure support for their own candidate by making a deal with one or more of the other sections. We do not favour a system likely to produce arrangements of this nature.

264. Nor do we favour the suggestion that the Governor should, after consultation with the leaders of the minorities, choose the members of the Council of Ministers and himself preside over the Council. It is not consonant with progress towards full responsible government under the Crown in all matters of internal civil administration; nor is it in keeping with the spirit of the Declaration of May, 1943, which, as it appears to us, involves so far as is possible keeping the Governor " out of politics."

The Scheme contained in S.P. XIV.

265. Under the Constitution in being before 1931, of the thirty-four elected members in the Legislative Council, twenty-three were territorially elected and eleven communally. The Donoughmore Commissioners recommended the abolition of the communal seats and " consolidation of the people into a single territorial electorate." They hoped that this alteration would " ultimately militate against the recording of votes merely on communal lines " and they further recommended that a local Commission should be appointed to redistribute territorial electoral areas on the basis of a population standard of 70,000 to 90,000, involving an increase in the number of members in the new Council to approximately sixty-five members elected territorially.

This recommendation was not fully carried out, for the State Council formed under the 1931 Order in Council consisted of no more than fifty territorially elected members. We are inclined to think that the reduction of sixty-five to fifty was detrimental to minority interests and was a mistake. As will be seen later, we are in favour of the proposal in S.P. XIV that the new Legislature should contain 101 members, of whom 95 should be elected territorially, and six nominated.

266. There is, it is true, abundant evidence to show that the hopes of the Donoughmore Commission, that communal tension would eventually disappear as a result of territorial representation, have so far not been realised. For instance, no Sinhalese has any prospect of election in the Northern and Eastern Provinces where the Ceylon Tamils predominate, and in most of the Western and Southern portions of the Island a Tamil, whether Ceylon or Indian, has little or no chance. Language alone is a handicap to such candidates, but the electors undoubtedly tend to vote on racial and, to some extent.

religious grounds. Many instances have been brought to our attention of unedifying appeals by candidates for support on such issues, but the alteration from communal to territorial representation in 1931 certainly did not originate, and, in our opinion, did not materially increase, communal differences. They are of far greater antiquity. But, as might have been expected, the electoral reforms brought out into the open and gave intensified public expression to underlying and deep-seated communal dissension. This is likely to continue so long as the electors allow themselves to be more concerned with racial preferences than with their material interests and prospects, and encourage candidates to lay stress upon the former. Indeed the impression we derived from some of the witnesses was reminiscent of the experiences of an envoy sent to report upon an Eastern country some two hundred years ago:—

" Un bruit se répandit qu'il était venu pour réformer toutes ces maisons. Aussitôt il reçut des mémoires de chacune d'elles; et les mémoires disaient tous en substance; ' Conserverez-nous, et détruisez toutes les autres.' "*

267. But already we discern unmistakable signs of a change in the attitude of the electorate, brought about partly by universal suffrage and the resultant attention demanded from and paid by candidates to the social needs of their constituents, partly by the great increase in the powers of self-government under the 1931 Constitution, and partly by the dissemination of a world-wide urge to provide a better standard of living for the poor and distressed. There are definite indications of the growth of a Left Wing movement more disposed to concentrate on social and economic than on communal issues. Nevertheless, we cannot expect any swift or immediate metamorphosis, and further development of the electoral conscience in this direction will depend largely upon the growth of education and general political experience, until it is fully realised that communal representation, though superficially an attractive solution of racial differences and to some extent the line of least resistance, will be fatal to the emergence of that unquestioning sense of nationhood which is essential to the exercise of full self-government.

268. We therefore reject any proposal calculated to reinforce the communal basis of election, and we prefer to develop the territorial method. We think, however, that there is force in the contention of the All-Ceylon Tamil Congress that territorial representation under present conditions tends to become simply numerical representation, and it seems to us that to that extent, and in the light of results, the recommendations of the Donoughmore Commissioners have pressed too hardly upon the minorities.

269. This is recognised in the scheme of representation outlined in S.P. XIV. Its object is to give additional weightage to the minority communities, which it is claimed can be attained by giving weightage to area as well as to population. The scheme assumes a Legislature of 101 members, of whom 95 would be elected on a territorial basis and six nominated. It provides for each Province to have one member for every 75,000 inhabitants and an additional member for every 1,000 square miles of area. It proposes that a Delimitation Commission shall be appointed by the Governor with instructions to divide the Provinces so that each electoral district shall have as nearly as may be an equal number of persons; but also to take into account " the transport facilities of the Province, its physical features and the community or diversity of interest of its inhabitants. . . . This community or diversity of interest may be economic or . . . social. On the average, each constituency would be about half the size of the present constituencies, and in the less thickly populated Provinces it would be much less than one half."†

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* Voltaire : Le monde comme il va—Vision de Babouc, 1746.
† S.P. XIV, Explanatory Memorandum, page 4, para. 7.

270. We were furnished with statistics to illustrate the working out of this scheme, and we investigated it with the assistance of a number of witnesses who came before us. Its advocates estimate that the result would be that, of the 95 elected seats, 58 would go to Sinhalese candidates and 37 to the minority candidates (Ceylon Tamils 15, Indian Tamils 14, Muslims 8), making, with the six nominated seats, a minority representation of 43 in a House of 101. Its critics—and notably the All-Ceylon Tamil Congress—describe the scheme as " a superficial attempt to satisfy the growing feeling behind the demand of the minorities for adequate representation and electoral self-preservation; . . . its only virtue was that the electoral areas of Ceylon would come into measurable physical proportions." It was their opinion that of the 95 elected seats, the minorities could at the best only secure 29, making with the nominated seats a minority representation of 35. They contended that the Northern and Eastern Provinces should consist of 25 constituencies so delimited as to ensure the return of 21 Ceylon Tamil members and four Muslims. The scheme in S.P. XIV proposes 16 constituencies for these two Provinces, estimated to return 13 Ceylon Tamils and three Muslims.

271. In the examination of the scheme in detail, the main objection raised was in regard to the instructions to the Delimitation Commission to provide that each electoral district should have as nearly as may be a given number of persons. It was pointed out that there were Provinces where, on the basis of the seats allotted by the scheme and on the principle of one seat per 1,000 square miles and one seat for every 75,000 population, substantial minorities would be excluded from representation unless they reached a figure equal to the result of dividing the total population of the Province by the number of seats allotted to it. For instance, the estimate of results under this scheme forecasts one seat for the Muslim community, numbering some 21,000 in the Southern Province, to which 12 seats were allotted. But the population of that Province was, according to the incomplete census of 1931, 771,000; and on the principle that each electoral district in the Province should have as nearly as may be an equal number of persons, the average population for each electoral district would be about 64,000.

272. It was accordingly argued that there was no possibility under the scheme of providing a seat in this Province for a representative of the Muslim community. It seems to us that this criticism has some substance, and indeed, in the forecast of results submitted to us by the sponsors of the scheme the exceptional character of three seats, including this Muslim seat, was recognised, although these seats were included in the estimated number of seats potentially available to the minorities. We think that this estimate cannot be upheld under the terms of reference proposed for the Delimitation Commission, and we are of opinion that the terms should be somewhat modified and enlarged, so that wherever it should appear to the Commission that there was a substantial concentration in any area of a Province of persons united by a community of interest, whether racial, religious or otherwise, the Commission should be at liberty to modify the factor of numerical equality of persons in that area and make such division of the Province into electoral districts as might be necessary to render possible the representation of that interest.

273. It was suggested to us that minority representation would be strengthened by the creation of multi-member constituencies on the ground that the only chance of representation for small minorities depended on their concentrating all their strength on candidates of their own choice in a multi-member constituency. It seems to us that it might be advantageous to adopt this method of representation in certain localities, for instance, in the City of Colombo and possibly in the Jaffna Peninsula, and particularly

where divisions of caste in the same community are prominent. We therefore propose that the Delimitation Commission should be instructed to consider the creation of such constituencies in appropriate areas.

274. The forecast of results also indicated 14 electoral divisions in which the Indian Tamils, principally estate labourers, would preponderate. At the moment they have only two elected representatives in the State Council. We think that this estimate should be accepted with caution, for it depends largely upon certain considerations affecting the franchise of those labourers, with which we have already dealt. Subject, however, to those considerations, we agree that a figure approximating to the estimated result could be achieved within the terms of reference which we propose for the Delimitation Commission.

275. We admit, however, that this scheme of representation by no means conforms to the strict canons of territorial election, and that it would not be unfair to describe it as a combination of territorial and communal representation. It should, however, be noted that there are precedents in the development of constituencies in the United Kingdom, where the boundaries of many constituencies appear to have been determined not only by factors of numerical equality, but by geography and the common interests and associations of the inhabitants. Indeed, the British House of Commons took its name from the "Communitates," i.e. shires and boroughs, and had no reference to population. At any rate, in the present circumstances of Ceylon we see no satisfactory way of securing a reasonable proportion of seats for the minorities, except by a method which combines territorial and communal elements.

But, unlike the scheme of "balanced representation," the weightage proposed in S.P. XIV does not guarantee the return of a candidate belonging to a particular community, and the electorate is free to exercise its own judgment and choose the best candidate irrespective of his race or religion. Yet without doubt it gives the minorities a better chance of representation than they would be entitled to on a strict basis of population. For this reason, we recommend that the proposal should be given a trial. We are informed that it is intended to hold the next census in April, 1946. For the purpose of the new Constitution it will be necessary to appoint a Delimitation Commission as soon as possible thereafter.

276. Article 12 of S.P. XIV prescribes that "The Governor-General shall appoint a Delimitation Commission consisting of the Chief Justice or a Judge of the Supreme Court, who shall be Chairman, and two other persons who shall not be members of the State Council." We feel some doubt whether it is advisable to appoint a member of the Judiciary either as Chairman or member of a Commission whose findings would inevitably have far-reaching political consequencies. We realise that the intention is to secure impartiality, but we should prefer the Governor-General to be unfettered in his selection of the members of the Delimitation Commission.

277. Article 14 (i) of S.P. XIV proposes to appoint another Delimitation Commission within one year after the completion of every census. We agree with this proposal, but we think that prior to the census following that of April, 1946, it would be desirable to set up a Select Committee of the Legislature to examine and report upon the working of the scheme of representation which we have recommended, with a view to formulating appropriate terms of reference for the Delimitation Commission due, on the assumption of a decennial census, to be appointed in or about 1956.

NOTE.—The figures supplied to us by the advocates of the scheme were the 1921 Census figures, being the only figures available to show the distribution of population by race.

RECOMMENDATIONS

278. We recommend that:—

(i) A Delimitation Commission shall be appointed by the Governor-General consisting of three persons, one of whom shall be Chairman; and that in making these appointments the Governor-General shall act in his discretion avoiding as far as possible the selection of persons connected with politics.

(ii) The Delimitation Commission so appointed shall divide each Province of the Island into a number of electoral districts, ascertained as provided in Article 13 (2) and (3) of S.P. XIV, but so that, wherever it shall appear to the Commission that there is a substantial concentration in any area of a Province of persons united by a community of interest, whether racial, religious or otherwise, but differing in one or more of these respects from the majority of the inhabitants of that area, the Commission shall be at liberty to modify the factor of numerical equality of persons in that area and make such division of the Province into electoral districts as may be necessary to render possible the representation of that interest.

(iii) The Commission shall consider the creation of multi-member constituencies in appropriate areas.

(iv) Within one year after the completion of every census, the Governor-General shall appoint a Delimitation Commission composed as aforesaid but (except in the case of the Commission to be appointed after the census of 1946) steps shall be taken before such appointment to review the working of the scheme of representation which we recommend.

CHAPTER XIV

THE LEGISLATURE: THE QUESTION OF A SECOND CHAMBER

279. Having expressed our views regarding the franchise and the representation of the electorate, we are in a position to discuss the form which the Legislature should take, its composition and powers and the qualification of its members.

The question which first presents itself to us is whether the Legislature should be uni-cameral or bi-cameral.

280. A considerable number of witnesses from all communities advocated the creation of a Second Chamber. The following were the principal reasons given in support of this proposal:—

(i) A Second Chamber would serve as a check upon hasty and ill-considered legislation to which a uni-cameral legislature, with a very short experience of responsibility and apt to be swayed by strong emotion and excitement, would be prone. Moreover, in view of the substantial reduction in the present classes of Reserved Bills contemplated by the 1943 Declaration such a check would become more necessary.

(ii) Persons of eminence and position, with high educational and intellectual attainments and possessing notable professional or administrative qualifications, were, under existing circumstances and the prevailing methods of electioneering, or for reasons of age or occupation, deterred from entering political life. Their services were lost to the counsels of a nation not blessed with a superfluity of persons of that calibre, and in their absence the Legislature was not fully representative of the country.

(iii) Uni-cameral government was contrary to the practice of every self-governing member of the British Commonwealth and of most major States in the world.

(iv) It would be easier in a Second than in a First Chamber to make adequate provision for minority representation.

281. All witnesses were agreed that the number of members in the Second Chamber should be smaller than that of the First and, on the assumption that under a new Constitution the latter would consist of about 100 members, opinions ranged from 30 to 50 as a suitable figure for membership of the former.

282. Divergent proposals were put forward for the election of members to the Second Chamber, varying from election on a restricted franchise, election by Provinces on the analogy of election to the Senate in the United States of America, by electoral colleges composed of local authorities or of associations representing law, medicine, commerce, industry and agriculture—i.e. functional or vocational election—to partial election by one or other of the above methods, or by the First Chamber under the system of the single transferable vote, combined with nomination by the Governor, as in the case of Burma.

283. The qualifications suggested were based mainly on educational attainments, certain scales of income and property, record of service and experience in public life, education, medicine or law, and on standing and authority in banking, commercial, industrial or agricultural circles.

284. The majority of the advocates of a Second Chamber were prepared to reserve to the First Chamber powers of legislation in matters of finance, but otherwise contemplated equal powers for each Chamber, provision being made for the solution of a deadlock by the device of joint sittings. A few witnesses recommended powers of delay like those possessed by the Second Chamber in the United Kingdom under the Parliament Act of 1911.

285. It would seem that similar proposals were put, for similar reasons, before the Donoughmore Commissioners, though with less unanimity, but found little favour with them. The grounds for rejection are set out in their Report (pages 39 and 40) and may be summarised as follows:—

(i) In so far as the proposals submitted to them involved election to a Second Chamber on a communal basis, the Commissioners were unwilling to retain what they described as "a canker on the body politic" and expressed themselves as unable to appreciate "what useful purpose would be served by its abolition in the Lower and its perpetuation in the Upper House."

(ii) They were less critical of election to the Second Chamber on a functional or vocational basis, but considered that it would "serve to perpetuate cleavages in the population which are largely artificial and would, by the identification of different classes with particular interests, obstruct those unifying tendencies which it must be the aim of true statesmanship to foster and to cherish."

(iii) In either case and holding that a Second Chamber was always a potential source of friction, they were of opinion that, though inferior in scope and power, it "would neutralise to a large extent the transfer of responsibility to the elected representatives of the people."

(iv) They clinched their arguments against the creation of a Second Chamber by two considerations—financial and physical. It seemed to them that the minority communities were mainly apprehensive of financial discrimination and that fear of hasty legislation usually meant fear of

taxation. But as it was impracticable to invest the Second Chamber with powers to initiate, amend or reject measures dealing with finance or taxation, it could afford little or no protection to minority interests against hasty legislation.

Furthermore, they had received " weighty evidence " that there was little likelihood of obtaining candidates of sufficient standing or authority for election to a Second Chamber without at the same time impairing the channel of supply to the Lower. In short, they concluded that a Second Chamber could not be established without a lowering of the standard and quality of members of the First Chamber and would be a constitutional luxury which the country could not afford.

286. Before we come to our own conclusions and recommendations on this matter, we propose to examine first the decision reached by the Donoughmore Commissioners, and secondly the objections raised by certain witnesses who desired the retention of a uni-cameral legislature.

It appeared to be the general opinion that the outcome of the efforts of the Donoughmore Commissioners to remove the " canker of communal representation from the body politic " had been disappointing. We are not disposed to disagree, for it is abundantly clear to us that no alignment of the communities on party lines has yet emerged to take the place of communal division. We do not, however, subscribe to all the sweeping assertions made in evidence as to the extent of communalism, nor do we admit the existence of all the evils that are alleged to result from it. But in view of the failure to abolish communal representation in the State Council, the inconsistency of its perpetuation in a Second Chamber becomes less apparent. In any event, communalism in a Second Chamber, except perhaps to a limited extent, is by no means inevitable.

287. We received no evidence to suggest that the functional or vocational basis of election would produce cleavages in the population, or would militate against unifying tendencies, and we are not aware that any such consequences have ensued elsewhere.

288. Whether or not a Second Chamber must always be a potential source of friction, we are unable to say. But the fact that a bi-cameral legislature has been established by all the self-governing members of the British Commonwealth and most major States in the world suggests that the risk of friction is not widely regarded as serious. And if a Second Chamber were debarred from dealing with Finance Bills and, in regard to other Bills, were invested only with powers of delay, we do not feel that the responsibility of the elected representatives of the people need be appreciably impaired.

289. The Donoughmore Commissioners thought that the minorities, in their fear of " hasty legislation ", usually had in mind measures of taxation, and they took the view, with which we agree, that it would not be practicable to invest a Second Chamber with power to protect minorities in the case of such measures without giving to it a share in the responsibility for Finance.

290. But we do not think that the power to delay measures other than financial, and thereby check hasty legislation, should be dismissed as of little account. In any event, it seemed to us from the evidence that the minorities were nervous, not so much of the methods of raising taxation, as of distributing the proceeds of it; not so much of legislation, financial or otherwise, as of administrative action, e.g. favouritism in the making of appointments to the Public Services and so forth.

291. As regards the difficulty of finding suitable candidates for the Second Chamber without impairing the supply to the Lower, we do not know the

number of members which the witnesses recommended to the Donoughmore Commission, but we find it very hard to believe that Ceylon is so short of persons of standing and ability that not even 30 suitable members could be found for the Second Chamber without detriment to the quality of the First. Moreover, it was part of the case of those advocating a Second Chamber that there were a number of eminent men prepared to play their part in a Second Chamber but unwilling to encounter the rough and tumble of popular election to the First.

292. Some of the minority witnesses were disposed to be critical of a Second Chamber, but apparently their attitude was due to the fear that a Second Chamber might be treated as a substitute—in their view, inadequate —for increased representation in the First Chamber, which was their main desire.

293. The out-and-out opponents of the proposal produced the following grounds for their objection:—

(*a*) A Second Chamber was anti-democratic and would act as a check on all progressive measures and would result in the " whittling away of democratic rights already achieved ".

(*b*) Experience elsewhere had proved Second Chambers to be ineffective and impotent.

(*c*) In the words of Abbé Sieyès, " If a Second Chamber dissents from the First, it is mischievous; if it agrees, it is superfluous ".

(*d*) The Secretary of State for the Colonies and the Governor already constituted in themselves a Second Chamber. The Governor's powers of overriding the Legislature provided an alternative to a Second Chamber, or, as one witness put it, " There is an Upper Chamber already existing for us in Whitehall."

294. In arriving at our conclusions, we have given very careful consideration to three factors:—

(i) The prospective changes in the Constitution arising from the greatly enlarged powers of the Government of Ceylon envisaged by the Declaration of 1943, and a corresponding reduction of the powers of the Governor.

(ii) The composition and character of the State Council.

(iii) The interests of the minority communities.

295. Seventeen years ago, in view of the powers of the Governor at that time, and subsequently under the 1931 Constitution, there was little risk of hasty and ill-considered legislation reaching the Statute Book, and the urge for a Second Chamber was not insistent. But in view of the Declaration of 1943 and our proposals, the situation may in due course become very different and we think that a Second Chamber will therefore be advisable—not only to fill the gap created by the diminution of the powers of the Governor, but as a means of averting or minimising any conflict that might arise between the Governor-General and the Lower House in respect of those powers still left to him.

296. Having studied many of the Debates in the State Council, we think that, in the particular circumstances of Ceylon, a Second Chamber can make a valuable contribution to the political education of the general public. As already pointed out, there are in Ceylon, as in other countries, a number of eminent individuals of high intellectual attainment and wide experience of affairs, who are averse to entering political life through the hurly-burly of a Parliamentary Election. But it would be an advantage to the country to enjoy the services of men upon whom party or communal ties may be

expected to rest more lightly, and who can express their views freely and frankly without feeling themselves constrained to consider the possible repercussions upon their electoral prospects. In this connection, it may be useful to recall the observations of Walter Bagehot regarding the Legislature of the United Kingdom, " With a perfect Lower House it is certain that an Upper House would be scarcely of any value . . . but though beside an ideal House of Commons the Lords would be unnecessary . . . beside the actual House a revising and leisured legislature is extremely useful. . . ."*

297. As regards the minority communities, we have reason to hope that the element of communal representation will not figure largely in the composition of a Second Chamber, and we trust that in the First Chamber an increase in the number of seats, coupled with a fresh delimitation of constituencies will put the minorities into a better position to resist the domination of which they profess to be apprehensive.

298. But in any case, a Second Chamber will still be of value to the minorities, for, in the words of John Stuart Mill " a majority in a single assembly when it has assumed a permanent character—when composed of the same persons habitually acting together and always assured of victory in their own House—easily becomes despotic and overweening if released from the necessity of considering whether its acts will be concurred in by another constituted authority."† Furthermore, we think that those who, rightly or wrongly, feel themselves menaced by majority action, may regard a Second Chamber not merely as an instrument for impeding precipitate legislation, but as a means of handling inflammatory issues in a cooler atmosphere.

We are fortified in our conclusions by the adoption of a bi-cameral Legislature in all the self-governing members of the British Empire and in most of the large States of the world. The investment of uni-cameral Legislatures with sovereign rights has become the exception and not the rule.

299. Thus the balance of argument seems to us to be definitely in favour of a Second Chamber, and it now remains to consider the number of its members, their qualification, the method of selecting them, the powers to be conferred on their House and its duration.

Number

300. We agree with the witnesses that membership of the Second Chamber should be substantially smaller than of the First, and we think that it should consist of 30 members.

Qualification

301. We think that a proportion of the members should be specially chosen on the ground that they either possess a record of distinguished public service or are persons of eminence in professional, commercial, industrial, or agricultural life. We think it both unnecessary and undesirable to impose an income and property qualification.

Selection

302. After careful consideration of the various methods proposed to us, we have come to the following conclusions:—

(i) We do not favour an election on a restricted franchise, not only because it would involve complicated machinery and administration, but because the canvassing and other adjuncts of electioneering inevitable at an election, whether on restricted or universal franchise combined with the distance

* Bagehot: The English Constitution, Third Edition, page 107.
† John Stuart Mill: Representative Government, Chap. XIII.

and difficulty of transport, would in our opinion act as a deterrent to many suitable candidates.

(ii) There is no provincial organisation in Ceylon comparable to the States of the United States of America, and no immediate prospect of establishing one.

(iii) There is more to be said in favour of an election by electoral colleges composed of local authorities. These consist of Municipal, Urban District and Village Councils. But we think that this method of election would not produce the results we have in mind, for it would tend towards the choice of members on local rather than national considerations. Furthermore, as in the case of elections on a restricted franchise, candidates for the Second Chamber would find themselves compelled to undertake electioneering campaigns.

(iv) There is much to be said for election by associations on a functional or vocational basis, but we think that election cannot be confined to such associations, though we propose to make use of their services in a simpler fashion.

303. We prefer the proposal that the Second Chamber should be selected partly by the First Chamber by means of the single transferable vote, and partly by nomination by the Governor-General; and we think that this method would ensure adequate representation of minorities in the Second Chamber. We understand that it has been adopted in Burma with satisfactory results.

Powers

304. We are, not in favour of joint sessions as a means of settling a conflict between the two Houses. Not only do we think that such a device is more likely to encourage disagreement than agreement between them, but we cannot envisage with equanimity a situation in which a measure that has passed the Lower House can be destroyed by means of the votes of the Second Chamber. We prefer that the powers conferred upon the Second Chamber should be powers of delay for the purpose of giving time for reflection and consideration, and we think that these powers should be somewhat similar to those possessed by the House of Lords in the United Kingdom under the Parliament Act of 1911.

305. We propose that there shall be power to originate Bills other than Finance Bills in either Chamber. It will therefore be necessary for the Government to be represented in the Second Chamber, for we are not in favour of permitting Ministers who are members of the First Chamber to sit and speak in the Second.

Article 45 (1) of S.P.XIV provides that Deputy Ministers not exceeding the number of Ministers may be appointed to assist the Ministers in the exercise of their Departmental and Parliamentary duties. We prefer the term " Parliamentary Secretaries " and we think that not less than two Ministers and not more than two Parliamentary Secretaries, if such be appointed, should be members of the Second Chamber.

Duration

306. Whether the Second Chamber should be coterminous with the First, whether it should be subject to dissolution but at longer intervals than the First, or whether, as for example in the case of the United States Senate, it should not be subject to dissolution, but should renew itself at regular intervals by the retirement and replacement of a proportion of its members in rotation, are questions of great importance and considerable difficulty to which we have devoted much time and thought.

307. Since there are in Ceylon, as we have pointed out earlier in this Chapter, important sections of opinion both in favour of and against the establishment of a Second Chamber it is necessary in forming our conclusions to take into account the reactions of each section. If a large measure of permanency and therefore independence is given to the Second Chamber, its opponents will regard it as a constant threat to the First. If on the other hand the Second Chamber is subject to fear of dissolution and the vagaries of election (at least in so far as a proportion of its members are concerned), it will fail to provide the safeguard against hasty or discriminatory legislation which is one of the main desires of its supporters. If these considerations are applied to a Second Chamber coterminous with the First, it is apparent that in such a Chamber the fear of dissolution will be strong, especially among the elected members. Moreover, the election of these members, who form one half of the total personnel of the Chamber, will fall immediately after a General Election, i.e. precisely at the moment when political feeling is at its peak. We consider that a Second Chamber suffering from these disadvantages would not commend itself to those who would wish to see in it some safeguard against hasty action by the First Chamber.

308. On the other hand a Second Chamber having a life of say seven years, as compared with the five year life of the Lower House, might be criticised as having too great a degree of permanency and being too irremovable to be sensitive to the current trend of political opinion. We are therefore inclined on balance to advocate the adoption as best suited to the conditions of Ceylon of the third of the courses we have mentioned, and to recommend that in a Second Chamber of thirty members, fifteen elected and fifteen nominated, five of each category should retire every three years in rotation, so that once normal working had been established each member would sit for nine years. The length of this period would ensure to individual members a feeling of security and of freedom of action and opinion, thus satisfying those who desire a Second Chamber primarily as a safeguarding body: while on the other hand contact with current political trends and sensitivity to popular feeling would be secured by the renewal of one third of the membership every three years, on occasions when, generally speaking, comparative political calm in between General Elections would exist.

309. Our proposals for arranging the necessary retirements in the third and sixth year after the establishment of the Second Chamber and for the filling of casual vacancies, are contained in the recommendations which follow.

Recommendations

310. We recommend that:—

(i) There shall be a Second Chamber consisting of 30 members, that it shall be called the Senate, and that its members shall be known as Senators.

(ii) 15 of the seats of the Senate shall be filled by persons elected by members of the First Chamber in accordance with the system of proportional representation by means of the single transferable vote; and 15 shall be filled by persons chosen by the Governor-General in his discretion.

(iii) The minimum age for entry to the Senate shall be 35, and persons chosen by the Governor-General shall either have rendered distinguished public service or be such persons eminent in education, law, medicine, science, engineering, banking, commerce, industry or agriculture as the Governor-General, after consultation with the representatives of the appropriate profession or occupation, may in his discretion choose.

(iv) The disqualifications for membership of the Senate shall be the same as those for membership of the First Chamber.

(v) The Senate shall choose one of its members to be President, who shall take precedence as near as may be in accordance with the usages of the United Kingdom. During any absence of the President, the Senate shall choose one of its members to perform his duties.

(vi) Not less than two Ministers shall be members of the Senate. If Parliamentary Secretaries are appointed, not more than two shall be members of the Senate.

(vii) The Senate shall have no power to reject or amend or delay beyond one month a Finance Bill; and, if a Bill other than a Finance Bill is passed by the First Chamber in two successive sessions and is rejected by the Senate in each of those sessions, the Bill shall, on its second rejection, be deemed to have been passed by both Chambers.

(viii) A Finance Bill shall be defined in accordance with precedents already existing in the British Commonwealth, and the Speaker of the First Chamber shall, after consultation with the Attorney-General, be empowered to certify whether a Bill is in his opinion a Finance Bill.

(ix) There shall be power to originate Bills other than Finance Bills in the Senate.

(x) We recommend that the normal term of office of a Senator shall be nine years, but that five elected and five nominated Senators (i.e. one third of the total membership of the Senate) shall retire every three years and be eligible for re-election or re-nomination. The identity of the members called upon to retire at the end of the third and sixth year after the date of the formation of the Senate under the new Constitution shall be determined by lot. Those persons who are elected or nominated after the end of the third or sixth year will hold office for nine years and a draw by lot will not be required after the sixth year. A person elected or nominated to fill a casual vacancy occurring at any time will hold office for the remainder of the term of office of the person he replaces.

We make no recommendation in regard to the remuneration of members of the Senate, but we think that it may be found desirable to provide a salary for the President.

CHAPTER XV

THE FIRST CHAMBER

311. We can now proceed to examine the Explanatory Memorandum and Parts II and III of S.P.XIV (Articles 5 to 32). These Articles deal with the Parliament of Ceylon, its composition, powers and duration, and with the composition of the Council of State and the qualification and disqualification of its members, their privileges and remuneration, the distribution of seats, the procedure of the Council and the appointments and emoluments of its officers.

312. In Article 5 of S.P.XIV, it is proposed that " the Parliament of Ceylon shall consist of the King and the Council of State; but if Parliament provides by law for the establishment of a Senate, Parliament shall consist, so long as such law is in operation, of the King, the Senate and the Council of State," and Article 6 empowers " the new Legislature to establish the Senate by ordinary legislation."*

* S.P. XIV, Explanatory Memorandum, page 4, para. 4.

313. If this provision were adopted, the establishment of a Second Chamber, or Senate, would depend on the decision of a majority of the First Chamber. We think, however, that it should not be left to the First Chamber to determine such an integral part of the Legislature and we cannot agree with this proposal.

Accordingly, we recommend that the Parliament of Ceylon should consist of the King and two Chambers. We think that the term " Council of State " is inappropriate to a First Chamber and we prefer the term " House of Representatives "; and we suggest that its members should be known as Members of Parliament. Thus the legislative powers of Ceylon would be vested in a Parliament consisting of the King, a Senate and a House of Representatives, which would be called the Parliament of Ceylon. An Act of Parliament would be expressed to be enacted by the King by and with the advice and consent of the Senate and the House of Representatives of Ceylon.

314. The scheme of representation set out in S.P.XIV provides for 95 elected territorial seats and 6 nominated seats, making a First Chamber of 101 members. We think that for a population of over 6 millions this is a reasonable figure.

315. We should like to have been able to dispense with nomination, but in view of the virtual impossibility of fitting the European or the Burgher communities into the electoral scheme of S.P.XIV, we think that, as at present, the representation of these two communities should be secured by nomination. It was proposed by the representatives of the Burghers that they should have a special electoral roll and that the Island itself should be constituted a single constituency for a separate Burgher electorate. This was the position between 1923 and 1931. A similar proposal was put forward to us by the Europeans. Apparently this method of election is preferred to nomination, because, we were told, the charge was constantly made against Nominated Members that they were the " hirelings and darlings of Queen's House," and the mouth-pieces of the Governor who nominated them. We appreciate the feelings of the Nominated Members, though we cannot suppose that they take this charge very seriously. But this method of election would be unreservedly communal and, as already pointed out, we desire, so far as possible, to discourage a reversion to communal representation. A similar consideration applies to the representation of the Europeans. Moreover, as regards the Burghers, the considerable, though perhaps not insuperable, administrative difficulty in determining the composition of their electorate serves to reinforce our disinclination to recommend a separate electorate for them.

316. As regards the Muslims (Moors and Malays), there are at present in the State Council two nominated representatives of the Muslim community. We hope that as a result of the delimitation of electoral districts to be undertaken by the Delimitation Commission it will no longer be necessary to represent the interests of this community by nomination to the First Chamber, and that an adequate number of Muslims will find their way to it by the process of election. Should our hope, however, be disappointed, it will be necessary to resort to nomination as at present.

317. Some of the Malays, purporting to represent the whole of the Malay community, pressed upon us a claim for special representation in the Legislature on a racial basis; others of the same community opposed any separate allocation of Muslim seats to Malays as " inimical to the indivisibility of Islam." To this claim we must apply the consideration which has prompted us to reject the proposals for separate representation put forward by the Burghers and the Europeans.

318. Articles 18 and 19 of S.P.XIV prescribe the qualifications for election and appointment to the First Chamber. These Articles retain the provisions of the present Constitution (Ceylon (State Council) Order in Council, 1931, Article 9), with the following exceptions:—

(*a*) Ability to speak, read and write English is no longer required. This is one of the qualifications at present in force and the proceedings in the State Council are invariably carried on in English. The presence of a Member unacquainted with the English language and unable to follow or take part in the Debates without the aid of an interpreter would no doubt be a great inconvenience to himself and many of his colleagues. Nevertheless we do not feel able to recommend the retention of a qualification which would in effect bar the election of a non-English speaking Tamil, Sinhalese or Muslim, though we do not expect that in practice much advantage would be taken of its abolition.

(*b*) Article 19 (*b*) aims at tightening up the rule concerning governmental contracts in which Members of Parliament may be directly or indirectly interested. (See also S.P.XIV, page 6, para. 16 of the Explanatory Memorandum). We think this an improvement on the existing rule.

(*c*) Disqualification on account of imprisonment is to be limited to sentences of three months or longer for certain offences only (mainly of a non-political character) under the Penal Code, and the period of such disqualification is limited to a period of 7 years after expiry of the sentence. (S.P.XIV, Article 19 (*d*) and page 6, para. 16 of the Explanatory Memorandum).

Under the present Order in Council (Article 9 (I) (*f*)), a Member is disqualified if he is serving a sentence of penal servitude or imprisonment for an offence punishable with hard labour or rigorous imprisonment for a term exceeding twelve months. We think it preferable to retain the disqualification in this form.

Article 19 (*d*) of S.P.XIV goes on to limit the period of disqualification to a period of 7 years after the termination of imprisonment or the grant of a free pardon. We think that in the case of a free pardon the period of disqualification should cease from the date of the granting of it.

(*d*) The provision in Article 19 (*h*) for the disqualification of a Member for accepting a bribe or gratification offered with a view to influencing his judgment as a Member of Parliament is an addition to the existing provisions for disqualification. We think this addition desirable but, in view of the consequence of the State Council (Expulsion of Members) Ordinance, No. 14 of 1943, we propose that provision should be made to secure that any allowance or other payment made to a Member by any Trade Union or other organisation solely for his maintenance should not be deemed to be a bribe or gratification within the terms of Article 19 (*h*).

Subject to the above modifications, we are in agreement with the proposals for the qualification and disqualification of Members contained in S.P. XIV.

319. We note that in the present Constitution it is specifically provided that a person shall be disqualified from membership of the Council who is not a British subject (Ceylon (State Council) Order in Council, 1931, Article 9 (*a*)). This provision is omitted from S.P.XIV and we assume the explanation of the omission to be that, by Article 18, no person will be qualified for membership unless also qualified to be an elector; and by the Order in Council of 1931, Article 6, no person is qualified to be an elector unless he is a British subject. Nevertheless, we should prefer the retention of Article 9 (*a*) of the Order in Council of 1931.

320. Articles 8, 10 and 11 of S.P.XIV will be examined in the later chapter of this Report dealing with the powers of the Governor-General. We have

already considered Articles 12 to 16 (Delimitation Commission and Distribution of Seats)*, 17 (Nomination)† and 18 and 19 (Qualification)‡.

As regards duration, we think that, unless sooner dissolved, the House of Representatives should continue for five years from the date appointed for its first meeting, and not, as provided in Article 26 (2), from the date of the last dissolution of Parliament. With the substance of the remaining Articles in Parts II and III we are in general agreement, though they will in our opinion require extensive re-drafting and, in the light of our recommendations, consequential amendment.

RECOMMENDATIONS

321. We recommend that:—

(i) There shall be a First Chamber, consisting of 101 members, and that 95 of those members shall be elected and 6 nominated by the Governor-General.

(ii) The First Chamber shall be known as the House of Representatives, and its members shall be known as Members of Parliament.

(iii) (*a*) For the purpose of qualifying for membership of the First Chamber, ability to speak, read and write English shall no longer be required.

(*b*) Stricter rules shall be applied in the matter of governmental contracts, etc., in which Members of Parliament are interested.

(*c*) Article 9 (I) (*f*) of the Ceylon (State Council) Order in Council, 1931, shall be retained, subject to the modifications indicated in para. 318.

(*d*) In the case of a free pardon, the period of disqualification of a Member of Parliament shall cease from the date of the granting of that pardon.

(*e*) In addition to the provisions for disqualification contained in the Ceylon (State Council) Order in Council, 1931, provision shall be made for the disqualification of a Member of Parliament for accepting a bribe or gratification offered with a view to influencing his judgment as a Member of Parliament, provided that any allowance or payment made to a Member of Parliament by any Trades Union or other organisation solely for his maintenance shall not be deemed to be a bribe or gratification within the terms of this provision.

(*f*) Article 9 (a) of the Ceylon (State Council) Order in Council, 1931, shall be retained.

(iv) Every House of Representatives, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting.

Both Chambers.

(v) A Member of either Chamber shall be incapable of being chosen or of sitting as a member of the other Chamber.

Sessions of Parliament.

(vi) The rules and conventions obtaining in the United Kingdom as to the frequency with which Parliament is summoned, and the length of sessions shall be followed in Ceylon, and provision shall accordingly be made in the Constitution.

Our object is to secure that Parliament should meet every year and that the normal length of a session should be approximately twelve months.

(vii) In accordance with the above recommendations and those in paragraph 310, the Parliament of Ceylon shall consist of the King, the Senate and the House of Representatives of Ceylon: and an Act of Parliament shall be expressed to be enacted by the King by and with the advice and consent of the Senate and the House of Representatives of Ceylon.

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* See paras. 269–278 above. † See paras. 315–316 above. ‡ See paras. 318–319 above.

CHAPTER XVI

THE EXECUTIVE

322. From Chapters III, IV and V, in which we have described the movement for the reform of the Donoughmore Constitution, it will be clear that the Executive Committee system has, from its inception and throughout its existence, been subjected to severe and incessant criticism, culminating in Sir Andrew Caldecott's Reforms Despatch and reiterated without intermission or diminution up to the present day. We have received evidence of opposition to this system from all quarters—minority as well as majority—and we are satisfied that the defects to which we have drawn attention render it detrimental to good government. In any event, even if we saw our way to recommend its continuance under the present Constitution, we should regard it as quite inappropriate to the new Constitution which His Majesty's Government's Declaration of 1943 and our recommendations envisage. We therefore recommend the abolition of the Executive Committee system and the substitution of what is known as Cabinet Government on the general lines proposed in S.P. XIV.

323. This recommendation will involve the following changes:—

(i) The Executive Committees and the Board of Ministers, including the three Officers of State (the Chief Secretary, Financial Secretary and Legal Secretary) will disappear.

(ii) Their place will be taken by a Cabinet of Ministers. Articles 43 and 51 of S.P. XIV propose " until Parliament otherwise provides " to constitute a Cabinet of 10 Ministers. We think it is undesirable to determine the size of a Cabinet in a constitutional document. Circumstances might at any time make it desirable either to reduce or increase the number of Cabinet Ministers, and Parliament would always have the power to accept or reject any proposal to create a new Ministry. One of the members of the Cabinet will be the Prime Minister appointed by the Governor-General. Following the constitutional convention applicable in the United Kingdom, the Governor-General, at the conclusion of a General Election, will send for the person who, in his judgment, is likely to command the largest following in the newly-elected House, and will invite him to form a government and assume office as Prime Minister. If he is willing and able to undertake this task, the proceedings normal in the United Kingdom will then ensue. The remaining members of the Cabinet will be appointed by the Governor-General on the recommendation of the Prime Minister, and the new Government will meet the Legislature for its approval or otherwise.

(iii) The additional Ministers required to replace the Officers of State will assume the functions of those officers, or such functions as may be assigned to them.*

324. The Donoughmore Report sets out in detail the various functions which the Commissioners recommended should be assigned to the Executive Committees and to the Officers of State. These functions were laid down in the Ceylon (State Council) Order in Council, 1931 (First and Second Schedules), with certain departures from the Donoughmore recommendations not in our opinion entirely justified in the light of subsequent experience.

Powers were given to the State Council to amend by resolution the First Schedule (which prescribed the functions of the Executive Committees) but

* See para. 326.

not the Second Schedule (which prescribed the functions of the Officers of State). Such a resolution required the approval of the Governor.*

325. We think that a restriction of this kind would be inappropriate to the new conditions and would not be consonant with the exercise of " responsible government in all matters of internal civil administration." We consider it neither necessary nor desirable that the functions to be assigned to each Minister should be laid down in the new constitutional instruments. We prefer the proposal contained in Article 44 of S.P.XIV which ordains that these functions shall be determined from time to time by the Prime Minister, subject to the provisions of Article 39. The functions of External Affairs and Defence would however fall to the Prime Minister in accordance with our recommendations in the next Chapter.

326. We think, however, that it may be helpful to make the following suggestions:—

(i) The functions of the Financial Secretary should be transferred to a Minister of Finance who, subject to the functions allotted to the Public Services Commission† should also be responsible for the Public Services, a function at present shared by the Chief Secretary and the Financial Secretary.

(ii) The functions of the Legal Secretary should be transferred to a Minister of Justice.‡

(iii) The Department of Fisheries should be transferred from the Ministry of Local Administration to the Ministry of Agriculture and Lands.

(iv) The function of Poor Relief should be transferred from the Ministry of Labour to the Ministry of Health.

(v) The control of Road Transport should be transferred from the Ministry of Local Administration to the Ministry of Communications.

(vi) The control of Emigration, Immigration and Repatriation should be transferred from the Chief Secretary to the Ministry of Home Affairs.

(vii) We are doubtful whether in the future the subject of Labour can be satisfactorily combined with the subject of Industry and Commerce. We recognise, however, that this has been the procedure since 1931, and we do not suggest an immediate re-allocation, though we think that it may well be necessary at a subsequent date to create separate Ministries.

In the meantime, it may be thought desirable to lighten the burden of the Minister of Labour, Industry and Commerce by the appointment of a Parliamentary Secretary.

(viii) We are in agreement with the proposal in S.P.XIV that the Governor-General, on the recommendation of the Prime Minister, may appoint Deputy Ministers to assist the Ministers in the exercise of their departmental and parliamentary duties, but we should prefer the title of Parliamentary Secretary and we suggest that, in the first instance and until further experience has been gained, Parliamentary Secretaries should be appointed to assist only those Ministers whose portfolios are particularly heavy.

Subject to these suggestions, we give our general approval to the proposals contained in Articles 42 to 52 of S.P. XIV.

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* Ceylon (State Council) Order in Council, 1931, Section 32, sub-section 2.
† See para. 379.
‡ See paras. 393-4.

327. Article 53, Sub-Section 2, also proposes a change in the administration of Government Offices. At present a Ministry consisting of a number of separate Departments (the average is about five) has an official at the head of each, ranking in authority and status as the equal of each of his colleagues at the head of the other departments of the Ministry. Consequently, the settlement of conflicting views amongst these various departmental chiefs, and the co-ordination of the work of their Departments, is in effect thrown upon the Minister. This involves him in a great deal of administrative activity from which he should be free, and imposes upon him the task of dealing with many details which should never come to his attention. He is in fact not only the political, but also the administrative head of his Ministry—not only the Minister, but Permanent Secretary as well.

328. The function of planning and co-ordinating the work of various sections of a Ministry, filtering material and presenting it in a form suitable for ministerial decision necessitates the appointment of a high administrative official similar to the Permanent Secretary to a Ministry in the United Kingdom, and we are in agreement with S.P. XIV in recommending such appointments.

329. We note that it is proposed in S.P. XIV that an officer shall be designated by the Governor-General, on the recommendation of the Prime Minister, to fill temporarily the post of Permanent Secretary to each of the Ministeries. We recommend that normally this appointment should be made by the Governor-General on the recommendation of the Public Services Commission, but we concur in the proposal of S.P. XIV that, in the first instance, and to cover a transitional period, the recommendations in respect of the Permanent heads of the Ministries should be made to the Governor-General by the Prime Minister.

RECOMMENDATIONS.

330. We recommend that:—

(i) The Executive Committees and the three Officers of State (the Chief Secretary, Legal Secretary and Financial Secretary) shall be abolished.

(ii) In place of the present Board, there shall be a Cabinet of Ministers responsible to the Legislature of whom one appointed by the Governor-General shall be Prime Minister. The Ministers other than the Prime Minister shall be appointed by the Governor-General on the recommendation of the Prime Minister.

(iii) The functions to be assigned to each Minister shall be determined by the Prime Minister, subject to the recommendation in paragraph 360 (xi) below.

(iv) The Governor-General may, on the recommendation of the Prime Minister, appoint Parliamentary Secretaries, but the number so appointed shall not exceed the number of Ministers.

(v) A Permanent Secretary to each Ministry shall be appointed by the Governor-General on the recommendation of the Public Services Commission.

CHAPTER XVII

THE GOVERNOR-GENERAL: POWERS, STATUS AND SALARY

331. The Donoughmore Commissioners pointed out that the change which they recommended in the power and position of the Governor of Ceylon would assign to him an intermediate station between the two extremes of a "constitutional" Governor and one of the old type associated with Crown Colony government. Such a change in his position must in their view accord with the degree to which responsibility was to be transferred, so that his executive powers would be diminished in direct ratio to the advance made towards responsible government.

Accepting this principle and following the guidance of the Declaration of His Majesty's Government of May, 1943, we shall set out in this chapter the powers which we recommend should be exercisable by the Governor-General under the Constitution we contemplate.

332. Article IV of the Royal Instructions of 1931 specifies seventeen classes of Bills which the Governor is instructed to reserve for the signification of His Majesty's pleasure. We propose that these classes shall be reduced to seven, namely:—

(i) Any Bill relating to Defence.

(ii) Any Bill relating to External Affairs, provided that Bills of the following character shall not be regarded as coming within this category:—

(*a*) Any Bill relating to and conforming with any trade agreement concluded with the approval of His Majesty's Government by Ceylon with other parts of the Commonwealth.

(*b*) Any Bill relating solely to the prohibition or restriction of immigration* into Ceylon, provided that the Governor-General may reserve any such Bill, if in his opinion its provisions regarding the right of re-entry of persons normally resident in the Island at the date of the passing of the Bill by the Legislature are unfair or unreasonable.

(*c*) Any Bill relating solely to the franchise.†

(*d*) Any Bill relating solely to the prohibition or restriction of the importation of, or the imposition of import duties upon, any class of goods, provided that such legislation is not discriminatory in character.

(iii) Any Bill affecting currency or relating to the issue of bank notes.

(iv) Any Bill of an extraordinary nature and importance whereby the Royal Prerogative or the rights and property of British subjects not residing in Ceylon or the trade or transport or communications of any part of the Commonwealth may be prejudiced.

(v) Any Bill any of the provisions of which have evoked serious opposition by any racial or religious community and which, in the opinion of the Governor-General, is likely to involve oppression or serious injustice to any such community.

(vi) Any Bill which repeals or amends any provision of the Constitution, or which is in any way repugnant to or inconsistent with the provisions of the Constitution, unless the Governor-General shall have been authorised by the Secretary of State to assent thereto.

(vii) Any Bill which is repugnant to or inconsistent with the provisions of a Governor-General's Ordinance. (See Article 39 (5) of S.P. XIV.)

* See paras. 234–235 and 242 (i) above. † See paras. 237–238 and 242 (ii) above.

333. It is stated in the Explanatory Memorandum which accompanies S.P.XIV that the legislative power proposed to be conferred by Article 7 of S.P.XIV is the widest possible power—" Authority as ample as the Imperial Parliament in the plenitude of its power could bestow "—and the Memorandum goes on to state that the power proposed to be conferred is in fact limited only by:—

(i) such Acts of the Parliament of the United Kingdom as extend or may extend to Ceylon;

(ii) the provisions of Article 8; and

(iii) the provisions of Article 10 (2), which require a two-thirds majority for a constitutional amendment.

334. As regards the provisions of Article 8 (*b*) and (*c*), we have already recommended* that the Parliament of Ceylon shall not have power to impose liabilities or confer advantages on persons of any community or religion without imposing or conferring similar liabilities or advantages on persons of all communities and religions. We agree with the remaining provisions (*a*) and (*d*) of this Article, namely that Parliament shall not make any law to prohibit or restrict the free exercise of any religion, or to alter the constitution of any religious body, except with the approval of the governing authority of that religious body, but we prefer the wording " at the request " in place of " with the approval ".

335. Article 10 confers on the Parliament of Ceylon the power to repeal the Order in Council embodying the new Constitution, and power to amend it by a two-thirds majority. We have recommended that the Order in Council shall provide that the Governor-General shall in every case reserve for the signification of His Majesty's pleasure any Bill by which any provision of the Constitution is repealed or amended, or which is in any way repugnant to or inconsistent with the provisions of the Constitution, unless he shall have been authorised by the Secretary of State to assent thereto.

336. Under Article 11 of S.P.XIV the Parliament of Ceylon would be enabled to make laws having extra-territorial operation. Experience elsewhere of the complications attendant upon legislation of this character makes it, in our opinion, inadvisable to confer this power under the type of Constitution we propose, and we recommend that the existing situation in this respect should be maintained.

337. In conformity with the Declaration of 1943, it will be necessary to give to the Governor-General the power to enact any direction of His Majesty's Government in regard to matters concerning Defence and External Affairs respectively. We shall deal with Defence later in this chapter. With regard to External Affairs we note that in Article 39 (1) of S.P.XIV External Affairs are defined as " any matters other than a matter affecting internal administration . . . contained in any Treaty between His Majesty and a Foreign State or Power, or in any agreement . . . between the Governor of Ceylon and the Government of any other part of His Majesty's dominions or of any Foreign State or Power ". This does not seem to us to be a satisfactory description. When our recommendations regarding the reservation of Bills relating to External Affairs are taken into account it appears to us that no definition of External Affairs is necessary. For reasons similar to those given in paragraph 358 regarding the portfolio of Defence we recommend that the portfolio of External Affairs should normally be held by the Prime Minister. We feel confident that External Affairs will usually be managed through the normal

* See para. 242 (iii) above.

constitutional machinery and that it will rarely, if ever, be necessary to employ a Governor-General's Ordinance. Nevertheless, there is a further contingency to be considered. The use of a Governor-General's Ordinance depends on certain constitutional machinery being in existence, and legislative action in regard to External Affairs may be necessary when such machinery does not exist. For this reason, and in order to ensure that in all possible and unforeseen circumstances His Majesty's Government may be able to fulfil their functions in regard to External Affairs, we think that His Majesty in Council must at all times have power to legislate by Order in Council in regard to External Affairs, and that the Constitution should contain an express provision to this effect. We observe that there is no provision in S.P.XIV to meet the case of a failure of constitutional machinery. We presume that in order to meet this contingency the usual provision by which His Majesty can revoke or amend an Order-in-Council will appear in the Constitution.

338. The proposal in Article 40 (*d*) of S.P.XIV to remove from the category of Reserved Bills any Bill which deals only with the establishment of shipping services, or the establishment or regulation of coastal shipping, does not appear to us to be consistent with the Declaration of His Majesty's Government of May, 1943.

In that Declaration, it is stated that, apart from measures affecting Defence and External Affairs, it is intended to restrict the general classes of Reserved Bills to classes of Bills which relate to the Royal Prerogative, the rights and property of His Majesty's subjects not residing in the Island, and the trade and shipping of any part of the Commonwealth.

If we interpret it correctly, we think that the Declaration of 1943 does not contemplate the exclusion from the classes of Reserved Bills of the matters specified in Article 40 (*d*) of S.P.XIV, and we must therefore express our disagreement with the proposal contained therein.

339. The procedure to be adopted in the case of a difference of opinion whether a Bill may properly be reserved under Article 38 is dealt with in Article 41 (1) of S.P.XIV, which reads:—

> "If any question arises whether a Bill may be reserved, or has been properly reserved, for His Majesty's assent in accordance with Article 38, the Attorney-General may refer such question to the Supreme Court, by whom it shall be considered in full bench and whose decision thereon shall be final."

We know of no precedent for a provision in a Constitution by which the Governor's discretion to reserve a Bill for the signification of His Majesty's pleasure is subject to statutory restriction, and we cannot agree with this Subsection. If the Ceylon Cabinet considered that a Bill had been improperly reserved, it would be open to them to resign and, if necessary, to force a General Election on the issue. There would, we consider, be ample constitutional means by which the Cabinet could ensure the most careful reconsideration of the position in such cases by the Governor-General and the Imperial Authorities concerned. But there are overwhelming objections to an arrangement under which a difference between the Imperial Government and the Ceylon Government (for a dispute as to the proper exercise by the Governor-General of his discretion would be nothing less) should be capable of reference to any Court for decision at the instance of either party to the dispute, and still less at the instance of one party only.

340. The substitution of Cabinet Government for the Executive Committee system, the disappearance of the Officers of State, the reduction of the classes of Reserved Bills and the closer approximation of the position of the Governor

of Ceylon to that of a Governor-General of a Dominion make it necessary to consider what advice he should have at his disposal to assist him in any matter where he is enjoined to act in his discretion and, though bound to refer such a matter to the Prime Minister for advice, is not bound to accept such advice. Normally we should expect that the Governor-General would act in close consultation and co-operation with the Prime Minister, and we trust that the occasions when the Governor-General's views are at variance with the views of the Prime Minister will be most infrequent and exceptional.

341. Nevertheless, it is desirable that the Governor-General should be able, if he so desires, to have recourse to other advice; for instance:—

(*a*) In matters of Defence he should be able to consult with the senior naval, military and air force officers in the Island; their advice would also be available to the Prime Minister in his capacity of Minister of Defence.*

(*b*) In External Affairs, we assume that the Governor-General will, where necessary, obtain guidance from His Majesty's advisers in the United Kingdom.

(*c*) We deal with the matter of advice to the Governor-General in the exercise of the Royal Prerogative of Pardon in para. 405 below.

(*d*) As regards classes (iii), (iv), (v), (vi) and (vii) of the Bills which we recommend that the Governor-General should be instructed to reserve, he would be able to consult His Majesty's Government in the United Kingdom and the Attorney-General in Ceylon.†

342. Under the present Constitution, the Legal Secretary must certify all Bills prior to submission to the Governor for assent. We recommend that such certification should, under the Constitution we propose, be given by the Attorney-General.

343. In the matter of appointments which lie within the discretion of the Governor-General, e.g. the membership of the Delimitation Commission, the Public Services Commission, the Judicial Services Commission and nomination to the Legislature, the Governor-General will consult the Prime Minister but will not be precluded from making such other enquiries as he may think fit.

344. At present, all communications from His Majesty's Government in the United Kingdom to the Ceylon Government pass through the Governor's office and are distributed thence to the appropriate Ministries. Under the future Constitution, we recommend that Dominion practice should be broadly followed so that in all appropriate cases such communications should be addressed to the Prime Minister's office. In that event, the Governor-General will require only a small Secretariat, but we think that a civil servant of high standing should be appointed to act as his Private Secretary, on the analogy of the Private Secretary to the Viceroy of India.

345. Under the existing Constitution, the Governor has a statutory duty to see and approve a great many matters of minor and even trivial moment —Village Committee By-Laws and so forth. In his Reforms Despatch, Sir Andrew Caldecott drew attention to the " many formal acts of approval which the Law at present requires to be performed by the Governor " and recommended that, on the advent of responsible Ministers, they should be placed within the legal compass of the appropriate Minister, either by delegation or Statute. We agree.

346 In the matter of summoning, proroguing and dissolving Parliament and the appointment and dismissal of Ministers, the Governor-General should

* See para. 358 below.

† See also paras. 401–403 below.

act in accordance with the conventions applicable to the exercise of similar functions by His Majesty in the United Kingdom.

347. In the event of the Governor-General being absent from the Island or being prevented from acting, we recommend that, unless there shall have been some other appointment by Dormant Commission, the Chief Justice should administer the Government.

348. It is proposed in S.P.XIV that when the new Constitution comes into force the Governor should bear the title of " Governor-General ". We support this proposal.

Article 35 of S.P.XIV proposes that there shall be charged upon the Consolidated Fund (to be established under Article 57) as salary for the Governor-General an annual sum of £8,000 sterling. We agree, but we think that, as under the present Constitution and following practice elsewhere, the salary should be free of Income Tax.

Defence

349. As a result of the development in recent years of the conception of " total war ", the term " Defence " nowadays covers a very broad field, and it will be necessary to give it the widest possible interpretation in dealing with the reservation of Defence in the new Constitution. This was no doubt the intention of His Majesty's Government in Sub-Section (2) of their Declaration of 1943. The inclusion of Bills relating to Defence within the category of Bills which the Governor-General is instructed to reserve, as we have proposed in para. 332 (i) above, will ensure that, so far as this subject is concerned, only legislation conforming with the policy of the Imperial Defence Authorities may be enacted by the Parliament of Ceylon.

350. The Governor-General's powers as regards Defence cannot, however, be limited to the control of legislation. In modern warfare, Defence measures involve practically every branch of administration, and it is necessary to provide for them to come into force as a whole and at short notice. Even in normal times, when no crisis threatened there would be occasions on which —for the implementation of long-range Imperial Defence policy or for other reasons—His Majesty's Government would wish to secure that certain necessary measures were carried out in Ceylon without delay. On such occasions, the Governor-General would no doubt in the ordinary course proceed by the normal constitutional machinery, would explain what was required to his Prime Minister, and would by all possible means endeavour to secure that the measures in question were carried out with the co-operation and through the agency of the Government of the day. If, however, for political or other reasons the Government should prove unwilling to play its part, the Governor-General must, if the terms of the 1943 Declaration of His Majesty's Government are to be complied with, have power to order the necessary action to be taken on his own authority. We agree with the proposal contained in Article 39 (1) of S.P.XIV, namely, that the Governor-General be empowered to meet this situation by means of a Governor-General's Ordinance.

351. There remain, however, two other contingencies involving Defence which may not be capable of being dealt with by normal constitutional methods or by a Governor-General's Ordinance. We refer to the emergency of war or a grave national emergency in which normal constitutional machinery has either broken down or become ineffective. In order to deal with either of these contingencies it may be necessary for His Majesty in Council to legislate by Order in Council. We recommend, therefore, that this power be reserved to His Majesty in Council and that an express provision to this effect be inserted in the Constitution.

352. It follows from the suggestions we have put forward that, in consequence of action taken in exercise of special powers relating to Defence, some expenditure may, in certain circumstances, have been incurred for which the sanction of the Legislature is not forthcoming. In this situation, we recommend that the ultimate allocation of the charge should be settled by negotiation by His Majesty's Government and the Government of Ceylon.

353. We now proceed to examine the Constitutional Scheme contained in S.P.XIV in so far as it deals with the reservation of Defence. Part IV of the Scheme, and especially Articles 38 and 39, are in question.

Article 38 (1) (*a*) provides that the Governor-General where " so instructed by His Majesty may reserve for His Majesty's assent . . . . any Bill dealing with Defence . . . . . as defined by Article 39." If " shall " is substituted for " may," this provision will conform with our proposals above, except that the definition of Defence in Article 39 (1) (*b*) differs in certain respects from the terms of Section (2) of the 1943 Declaration of His Majesty's Government, in that the Ceylon Defence Force and the Ceylon Royal Naval Volunteer Reserve are excluded from the definition. While we fully understand the special interest which the Ceylon Government must have in the welfare and administration of their Local Forces, we cannot agree that the operational control of those Forces can be properly exercised by any authority other than the Imperial Defence Authorities. It is clearly necessary that in time of war or emergency both the Imperial and the Local Forces in Ceylon must be under one and the same operational control. It must not, therefore, be possible either for the Local Legislature to prevent such control being exercised by passing a Bill which, under Article 38 (1) (*a*) of S.P.XIV, would not be a Bill to be reserved, or for the Governor-General to be unable by Governor-General's Ordinance to establish such control if it was not voluntarily accepted. For these reasons, we recommend that the definition of Defence in Articles 39 (1) (*b*) of S.P.XIV be amended by the omission of the words " other than the Ceylon Defence Force and the Ceylon Royal Naval Volunteer Reserve ".

354. Article 39 (2) of the Scheme contained in S.P.XIV provides that " A Governor-General's Ordinance shall not impose any charge on the revenue of the Island or upon any person resident in the Island, or authorise the appointment or dismissal of any person to or from the service of the Government of Ceylon." As we have explained above, circumstances may arise in which the Governor-General, in the execution of Defence measures on the instructions of the Imperial Authorities, may be obliged to order expenditure which it is impossible to meet without the concurrence of the Ceylon Government. We have suggested that in this situation the ultimate allocation of the charge between the Imperial and Ceylon Treasuries should form the subject of negotiations between the two Governments. We doubt whether the question of the appointment or dismissal of persons to or from the service of the Government of Ceylon is likely to arise on many occasions in connection with the Governor-General's exercise of his special powers in regard to Defence. But in order to leave no possibility of his experiencing difficulties in this regard, we recommend that this stipulation should not be binding upon the Governor-General where the exercise of his Defence powers is concerned.

355. Similar circumstances arise in connection with Article 39 (3). The Governor-General may, in the carrying out of instructions relating to Defence from the Imperial Authorities, have no alternative but to issue directions to a public officer, if he is faced with the non-co-operation of his Ministers. We cannot agree that the Governor-General's powers to carry out the instructions of the Imperial Authorities in a Defence matter of importance should be circumscribed by the necessity to obtain the concurrence of Ministers.

356. The intention of Article 39 (4) is no doubt to ensure that the Governor-General shall first exhaust the possibilities of action through the usual political and administrative channels before exercising his special powers. We have already expressed our full agreement with this intention, but we see grave danger in the stipulation that one month must elapse before the Governor-General takes action on his own authority after seeking and failing to obtain the co-operation of the Government. This condition might well neutralise the whole purpose and effect of the Governor-General's action and imperil the security of the Island and the Commonwealth, and we can only accept its imposition in cases where the Governor-General is satisfied that the interests of the Defence of Ceylon and of the Commonwealth would not be prejudiced.

357. As we have already made clear, it has been necessary, in our recommendations for the working of the Defence reservation in the manner described above, to make provision for every possible contingency, including the non-co-operation of the Ceylon Government in the Defence policies of His Majesty's Government. In doing so we have no wish to cast any reflection on the political leaders of Ceylon, who have loyally co-operated in the present war, or on the Island's future leaders who will, we are convinced, extend to the Defence of the Empire with which Ceylon is so vitally concerned the same unstinted co-operation as the leaders of to-day. But in matters of Defence it is necessary to provide for every possible contingency, likely and unlikely, as the experience of the present war has proved, and we should be failing in our duty if we omitted to provide for the situation described above. We take it, however, that in the normal course relations between His Majesty's Government and the Government of Ceylon will be completely harmonious in Defence as in other matters, and that recourse to the Governor-General's special powers will in practice rarely, if ever, prove necessary. We must now consider the channels by which, in the normal course, the Imperial Authorities will make known their Defence policies to the Government of Ceylon and enlist the latter's co-operation.

358. We suggest that there should be a Portfolio of Defence held by the Prime Minister. He, as Head of the Government, would be the most suitable repository for the information on Imperial Defence policy which would in the course of his duties inevitably come his way, and the natural adviser to the Governor-General on all those Defence questions in which local political considerations are involved; and in the event of legislation being required, he would, as Minister of Defence, be the most appropriate Minister to take charge of the Bill. In regard to all administrative matters connected with Defence, the Minister of Defence, on instructions when necessary from the Imperial Authorities received through the Governor-General, would be the instrument through which Imperial policies would be carried out.

While the powers of the Minister of Defence would necessarily be limited by the overriding authority of the Imperial Government, the post would, we consider, be one of great responsibility and importance, especially as, apart from the advice which he would give to the Imperial Authorities on matters affecting the Ceylon Government, the Minister would also be closely connected with the extent and nature of the contribution made by Ceylon herself to the Defence of the Commonwealth.

The Maldives

359. The Maldive Islands, which lie 400 miles to the South-West of Ceylon and are often loosely referred to as a dependency of Ceylon, are in fact a Protectorate of His Majesty's Government by virtue of the undertaking given to the reigning Sultan in 1887. It is clear, therefore, that the constitutional nexus is with the Imperial Government and not with the Government of Ceylon, although for reasons of convenience the Governor of Ceylon receives

the Maldivian tribute annually on behalf of His Majesty. It will therefore be necessary to include in any new constitutional instruments which may be framed for Ceylon an exempting provision in respect of the Maldives similar to Article 2 of the Ceylon (State Council) Order in Council, 1931.

RECOMMENDATIONS

360. It is difficult to summarise the recommendations of this chapter without undue recapitulation. The more important of our recommendations in respect of the powers, status and salary of the Governor-General are that:—

(i) The classes of Bills which the Governor-General is instructed to reserve for the signification of His Majesty's pleasure shall be those specified in para. 332 above.

(ii) The Order in Council embodying the Constitution shall provide that:—

(a) The Parliament of Ceylon shall not make any law rendering persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable, or confer upon persons of any community or religion any privileges or advantages which are not conferred on persons of other communities or religions.*

(b) Parliament shall not make any law to prohibit or restrict the free exercise of any religion; or to alter the Constitution of any religious body except at the request of the governing authority of that religious body.

(c) His Majesty in Council shall have power to legislate for Ceylon by Order in Council in regard to External Affairs and Defence.

(iii) The existing situation as regards the power of the Ceylon Legislature to make laws having extra-territorial operation shall be maintained.

(iv) Certification of all Bills prior to submission to the Governor-General for assent shall be given by the Attorney General.

(v) In summoning, proroguing and dissolving Parliament, and in the appointment and dismissal of Ministers, the Governor-General shall act in accordance with the conventions applicable to the exercise of similar functions by His Majesty in the United Kingdom.

(vi) In the event of the absence of the Governor-General from Ceylon, or of his being prevented from acting, the Chief Justice shall administer the Government unless there shall have been some other appointment by Dormant Commission.

(vii) Communications from His Majesty's Government in the United Kingdom to the Government of Ceylon shall in all appropriate cases be addressed to the Prime Minister.

(viii) Under the new Constitution the Governor shall bear the title "Governor-General" and shall receive an annual salary of £8,000 sterling.

Defence

(ix) The Governor-General shall have power to make laws to be called Governor-General's Ordinances dealing with External Affairs and Defence.

(x) The ultimate allocation of any expenditure incurred in consequence of action taken in exercise of special powers relating to Defence shall be settled by negotiation by His Majesty's Government and the Government of Ceylon.

(xi) There shall be a portfolio of Defence and External Affairs held by the Prime Minister.

The Maldives

(xii) The Order in Council embodying the Constitution shall include an exempting provision in respect of the Maldive Islands, similar to Article 2 of the Ceylon (State Council) Order in Council, 1931.

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* See para. 242 (iii).

CHAPTER XVIII

THE PUBLIC SERVICES

361. Throughout this chapter the term " public services " will be used in its widest sense to include the whole of the Public Services of Ceylon, without the distinction between the " Ceylon Civil Service " and the " Ceylon Public Service " described in detail on page 124 of the Donoughmore Report.

362. In Chapter VIII of their Report, the Donoughmore Commissioners reviewed the state of the Public Services and the disabilities under which they laboured at that time, and suggested safeguards designed to preserve and improve the rights and status of the services under the new Constitution. They recommended, *inter alia*, the reservation to the Governor of the right to make all appointments to the Public Services, with the approval of the Secretary of State in specified cases; the grant to all public servants holding posts the filling of which was subject to the approval of the Secretary of State, or who might have been recruited to such posts before the publication of their Report, of the unqualified right to retire on proportionate pension with compensation for loss of career, either immediately or at any time in the future; and the reservation to the Secretary of State of the final decision in all matters affecting the salaries and emoluments, pensions and gratuities, prospects and conditions of service of all public servants who then held or might in future be recruited for such posts, or the gratuities and pensions payable to their widows or orphans or legal representatives.

363. Provisions covering these recommendations were included in the Donoughmore Constitution as finally promulgated, and will be found in Articles 86 to 88 inclusive of the Ceylon (State Council) Order in Council, 1931. In that Order in Council a distinction is drawn between officers appointed or selected for appointment before the date of publication of the Donoughmore Report (17th July, 1928) and officers appointed or selected for appointment between that date and 12th December, 1929, when the Donoughmore Scheme was accepted by the Legislative Council of Ceylon.

364. The Order provides that the former may retire at any time after the commencement of the Order, while the latter may retire at any time within five years after the commencement of the Order, terms at least equal to " abolition of office " terms being granted in both cases. This distinction presumably had its origin principally in the consideration that persons accepting appointment after the publication of the Donoughmore Report were in a position to gain from that Report some idea of the general conditions under which they were likely to have to serve and thus had less claim for compensation in consequence of the change from pre-Donoughmore conditions.

In all, some 347 officers entitled to the unlimited option have already retired, and the option still remains open to some 247 officers still in the Service to exercise if they so desire. Five officers took advantage of the option of retirement within five years.

365. For those who elected to remain in the Service, it cannot be said that the disabilities noticed by the Donoughmore Commissioners have diminished to any great extent since 1931, notwithstanding the Commissioners' strictures. Indeed, certain provisions of the 1931 Constitution, notably Article 32 of the Ceylon (State Council) Order in Council, which imposes on Members of the State Council the duty of taking an active interest in the administration of the various subjects and functions of Government with which the Executive Committees are entrusted; and Public Services Regulations Nos. 13 and 15, which give to Executive Committees the right to make recommendations for the

filling of practically all important appointments, whether substantive or acting, seem specifically designed to perpetuate that interference of Ministers and Members of Council in personnel questions which the Donoughmore Commissioners rightly deplored.

The evidence submitted to us, and the conclusions we have drawn from informal conversations with public servants of all classes in various parts of Ceylon, leave no doubt in our minds that this interference continues to be one of the principal sources of discouragement and ill-feeling throughout the Public Services, especially among the senior officers.

366. During the period of our stay in Ceylon, two instances came to our notice of public criticism by Ministers of senior public servants who had neither the right nor the opportunity of replying in their own defence. In the one case, a Minister dealing in the State Council with a charge of neglect of a certain matter which was the responsibility of one of his Departments, excused himself by laying the blame on the officer in charge of that Department. In the other, aspersions were gratuitously cast on a senior European official in a public speech by a Minister whose sole apparent object was the making of political capital against the European community. Such instances, we are informed, are by no means isolated, and if, with the greatest regret, we feel bound to draw attention to them, it is because they serve to reinforce the arguments which follow for the provision, as part of a new Constitution which must necessarily give still freer rein to Ceylon Ministers, of favourable retirement terms for senior officers of the Public Services who do not feel that they can continue to serve under such conditions.

367. Moreover, the tendency noticed by the Donoughmore Commissioners on the part of the Unofficial Members of the former Legislative Council to question the salaries and allowances of members of the Public Services appears to have become more, not less, marked since the introduction of the 1931 Constitution. The State Council has made a practice of deleting from the Estimates the provision for the passage grants and holiday warrants of public servants and their families, and the Governor has been obliged to re-insert them by means of his special powers of certification.

368. It is against this background that one must consider the removal from the Secretary of State of the ultimate control of the Public Services, and the transfer to the Ceylon Parliament of the right to review annually the expenditure on personal emoluments (excepting in certain special cases) which we think is necessarily involved in the grant of full responsible government in internal civil administration. While we earnestly hope that the practices we have referred to will be discontinued by the Members of a new Parliament of Ceylon possessing the unqualified right to review the personal emoluments of public servants, it will be obvious that the transfer to Parliament of the ultimate control in personnel matters will constitute a far more radical change in the conditions of service of existing members of the Public Services than those introduced in 1931, and that, in consequence, the right to retire on pension with compensation for loss of career must be provided under the new Constitution for the officers affected.

369. We adhere to the general principles laid down in similar circumstances by the Donoughmore Commissioners, i.e. that:—

(i) the right should be unqualified;

(ii) it should extend to all officers whether European or Ceylonese who are now in the service of the Ceylon Government and whose appointments are subject to the approval of the Secretary of State; and

(iii) it should be a continuous option lasting not for a specific period, but throughout the period of each officer's service under the Ceylon Government.

370. Nevertheless, we consider that some distinction should be made between the terms offered to public servants appointed before the date of publication of the Donoughmore Report—17th July, 1928—and those appointed or selected for appointment on or after that date. To the latter class of officers the constitutional developments, which have been continuously under discussion since the introduction of the Donoughmore Constitution and which it is our duty in this Report to formulate, cannot be said to have come as a surprise. Since 1931 it has become increasingly clear that further evolution towards full self-government was only a matter of time. For this reason we consider that an unlimited option to retire at any time in the future should not be granted to officers appointed since the publication of the Donoughmore Report, but we would concede to all such officers the right granted in somewhat similar circumstances by Article 88 (1) of the Ceylon (State Council) Order in Council, 1931, to retire within a limited period. We suggest that all officers appointed on or after the 17th July, 1928, should have the option to retire on pension, with compensation for loss of career, for a period of three years from the promulgation of any new Constitution which may be granted as a result of our recommendations. We have limited the period to three years in view of the time which is likely to elapse between the publication of our Report and the entering into force of any new Constitution which may be framed as a result.

371. We note that in Article 67 of the Draft Order in Council contained in S.P.XIV the option of retirement for all officers, irrespective of the date of appointment, is withdrawn one year after the date appointed for the introduction of the new Constitution. It would in our opinion be unreasonable so to limit the option, since it is impossible to foresee within so short a time exactly how the new Constitution will affect the interests of public servants Moreover, if the option of retirement were so restricted, it seems inevitable that many officers would elect to retire in apprehension of future developments who might, if a longer period were allowed, come to realise that their fears were exaggerated. The number of retirements within that period might indeed be so large as to cause embarassment to the Government. Moreover, it may come about that if the day appointed for the introduction of the new Constitution falls closely on its publication, and terms and conditions of retirement had not already been worked out and approved, the time taken for their preparation and approval may seriously encroach on the one year allowed for the exercise of the option. Lastly, an attempt to recruit large numbers of replacement officers within a short period would undoubtedly mean that inferior candidates would be included.

372. We therefore recommend that:—

(i) the right to retire on pension with compensation for loss of career already held by certain classes of officers (i.e. those whose appointments are subject to approval by the Secretary of State) appointed before 17th July, 1928, shall be secured to them afresh under the new Constitution;

(ii) in the case of all officers of the classes specified (i.e. whose appointments are subject to the approval of the Secretary of State) appointed or selected for appointment after 16th July, 1928, and before the publication of this Report, a similar right of retirement on pension, with compensation for loss of career, shall be granted but to be exercised within a period of three years from the date of promulgation of the new Constitution.

(iii) Retirement on terms at least equal to " abolition of office " terms shall be granted to all public officers whose posts cease to exist by reason of the coming into operation of the new Constitution.

(iv) the pension rights (including the prospective pensions of widows and orphans) of officers who have already retired, of officers still in the Public Services, and of officers who have accepted or may accept transfer from the Ceylon Public Services but have earned a proportion of their ultimate retiring pension by service in Ceylon, shall be suitably safeguarded.

The Public Services Commission

373. In Article 86 of the Ceylon (State Council) Order in Council, 1931, the powers of appointment, promotion, transfer, dismissal and disciplinary control of public officers are vested in the Governor, and the Public Services Commission set up under Article 89 is advisory to him in the exercise of those powers. The Commission normally consists of the Chief Secretary as Chairman and two other members who have up to the present been the Financial and Legal Secretaries.

374. The transfer to the Parliament of Ceylon of full responsible government in internal affairs will involve a considerable increase in the responsibilities of the Public Services Commission. Hitherto, the ultimate decision in all important cases has rested with the Secretary of State, and public servants have felt that they could rely on the impartiality of an authority so remote from local influence. Henceforward, except in so far as the right of the subject to petition His Majesty is concerned, there will be no appeal in personnel matters to any authority outside Ceylon. It will therefore be doubly necessary that the deciding authority in Ceylon should be immune from accusations of partisanship.

Composition

375. We have given much thought to the question of the proper composition of the re-constituted Public Services Commission which will, under our recommendations, advise the Governor-General as to the final decision on personnel questions. We see no reason to depart from the normal arrangements as regards the number of members of the Commission and we recommend that, in conformity with Article 62 (1) of S.P.XIV which continues these arrangements, the Commission shall consist of three members one of whom should be Chairman. We also agree with the provisions of Article 62 (2) in regard to the disqualification of Members of the House of Representatives or the Senate, or of candidates for election to either House, for appointment to the Commission.

376. With regard to the concluding provision of Article 62 (2), however, that not more than one of the Commissioners may be a person drawing a Ceylon pension, we consider that, in order that there may at all times be sufficient knowledge and experience of the machinery of government available to the Commission, it should be mandatory that one, but not more than one, of the Commissioners should be either a retired public servant, or a public servant whose membership of the Commission would be his last appointment under the Ceylon Government.

377. It has been suggested in some quarters that at least one of the Commissioners should be a retired Judge. We recognise that there will be many occasions in the course of the Commission's business, especially in regard to disciplinary proceedings and appeals, when the legal knowledge and experience and the judicial qualities of mind attaching to a former occupant of the Bench would be of the greatest value. But legal advice will always be available to the Commission from other sources, and we consider that, other things being

equal, administrative ability and experience gained either inside or outside the public services is more important than legal experience, in the case of a Commissioner whose duties will include not merely the settling of disciplinary cases, but also of questions of appointment, cadre, conditions of service, etc., which are in no sense judicial. While, therefore, there may be from time to time a retired Judge who is eminently suitable for appointment to the Commission, we do not consider that this will necessarily be so at all times, nor that the appointment of a retired Judge not clearly suited to the task would, by reason only of the fact that he has held judicial office, enhance the authority and reputation of the Commission.

Appointment.

378. In order to safeguard the impartiality of the Commission to the maximum possible extent, we recommend that its Chairman and members shall be appointed by the Governor-General in his discretion. We note that this conforms with the proposal in Article 62 (1) of S.P.XIV.

Functions.

379. Under the Scheme contained in S.P.XIV, the powers of promotion, transfer, dismissal and disciplinary control of officers of the public services are vested in the Governor-General. But the functions of the Public Services Commission are specifically referred to only in Article 64, which lays down that appointments not otherwise provided for and carrying an official salary of not less than Rs.3,600 shall be made by the Governor-General on the recommendation of the Public Services Commission. We assume that it was the intention of the framers of the Scheme that the Governor-General's powers as regards promotion, transfer, dismissal and disciplinary control shall also be exercised in a similar manner to the power of appointment, i.e., on the advice of the Public Services Commission, and we recommend that these powers should be so exercised.

380. Powers of subordinate appointment will no doubt be delegated, as at present, to Heads of Departments; but we see no reason why the present salary limit of Rs.2,600 a year (Rs.3,200 a year in the case of " old entrants ") above which powers may not be so delegated should be raised to Rs.3,600 as proposed in Article 64 (1) of the Sessional Paper Scheme. Nor can we agree with the provision in Article 66 (2) for the delegation of powers relating to personnel matters to Ministers, since, as we have said, the primary object of our recommendations in this regard is to remove the public services so far as possible from political influence.

Administration of the Public Services: transfer of existing functions.

381. Subject to the overriding provisions of Articles 33 and 86 of the Ceylon (State Council) Order in Council, 1931, the functions and subjects which together may be described as " the administration of the Public Services " are at present allocated under the Statement of Administrative Procedure as follows:—

Chief Secretary.

Administration of the public services. Granting of leave to public officers. Government quarters and office accommodation.

Financial Secretary.

Salaries, wages, allowances, remuneration and fees of Government employees; travelling regulations; leave regulations; passages of Government officers; holiday warrants; periodical railway passes and concession tickets; season tickets for Government employees; regulation of advances of salary to Government officers; cadres of staffs; security of public officers; pensions; widows' and orphans' pensions; provident, guarantee, benevolent, benefit and other funds relating to Government officers.

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382. It will be seen that in practice the administration of the public services is divided between two officers of State—the Chief Secretary and the Financial Secretary, such items as " cadres of staffs " and " salaries, wages, allowances, remuneration and fees of Government employees " falling to the latter. The Chief Secretary, however, deals with disciplinary matters and such questions as transfers, grant of increments, promotions from class to class in the clerical service, and general questions of conduct of public servants, e.g., in relation to investments, indebtedness, participation in political affairs, etc.

383. The position is thus that, under the present arrangements, there exists in regard to the administration of the Public Services a system of diarchy in which the major responsibility rests with the Chief Secretary and the more important powers with the Financial Secretary. We consider that it would be to the advantage, both of the public and of the Public Services, if a similar diarchy is avoided under any new Constitution that may be granted. While we do not propose to go into the detailed organisation of the new governmental machine, we would suggest that, if our recommendations as regards the setting up of a Ministry of Finance and a system of Permanent Secretaries to Ministers are accepted, the subjects at present allocated to the Financial Secretary would appropriately fall within the purview of the Permanent Secretary to the Minister of Finance, who would, as in England, be regarded as the Head of the Public Service and the officer ultimately responsible for its efficiency and contentment—subject, of course, to the over-riding responsibility of the Legislature in regard to the provision of funds. Under such an arrangement, the system of Treasury Circulars in force in England would no doubt be used to prescribe principles and practice throughout the Public Services, and the Permanent Secretaries to Ministers and the Heads of individual Departments would be responsible for their enforcement.

384. As regards the remaining functions in relation to the Public Services at present exercised by the Chief Secretary, we suggest that the grant of leave might be transferred to the Permanent Secretary of the Ministry concerned in the case of senior officers, and to Heads of Departments in the case of other officers. Decisions as regards Government quarters and office accommodation might be transferred to the Ministry of Finance, while the remaining functions, with the exception of discipline and appeals, dealt with below, might be distributed between the Permanent Secretary to the Minister of Finance and the other Permanent Secretaries or Heads of Departments, by delegation under a provision similar to that in Article 66 (2) of S.P.XIV, amended as proposed above to exclude the delegation of powers relating to personnel matters to Ministers. These are however only suggestions. We do not wish to make recommendations as to the re-allocation of duties between the various Government Departments concerned, as this can only be worked out in detail after the new constitutional instruments have been drafted.

Disciplinary Proceedings and Appeals

385. The procedure to be followed in regard to the conduct of disciplinary proceedings and the hearing of appeals by public servants in respect of salaries, promotions, conditions of service and disciplinary matters remains to be considered. In the following paragraphs we propose to indicate the general lines on which we consider that powers in these matters might be exercised. We recommend that:—

(1) where under the present Constitution the Head of Department can institute and complete disciplinary proceedings without reference to any higher authority, the officer in the position of Head of Department under the new Constitution (not the Permanent Secretary) shall continue to be able to institute and complete such proceedings;

(2) where under the present Constitution the Head of Department can only institute proceedings and complete an enquiry, but is not empowered to take a decision and must therefore refer the proceedings to the Public Services Commission, who in turn advise the Governor as to the finding and final punishment, if any, similar proceedings under the new Constitution shall continue to be submitted to the Public Services Commission through the Permanent Secretary to the Ministry, who will make his own recommendations; but the decision will rest with the Public Services Commission without further reference to the Governor-General;

(3) where under the present Constitution disciplinary proceedings can be instituted only with the approval of the Governor, they shall be instituted under the new Constitution only with the approval of the Public Services Commission. The enquiry shall be conducted by a person or persons specially appointed, and the findings shall be submitted to the Public Services Commission who shall then make a recommendation to the Governor-General;

(4) in regard to such disciplinary cases as now come before the Public Services Commission under the present Constitution, the Commission shall be a reviewing or confirming authority under the new Constitution, and shall act as a Board of Appeal—see paras. 386-388 below.

386. We are informed that under the present arrangements the Chief Secretary and the Financial Secretary spend a considerable amount of their time dealing with appeals by public servants on questions involving:—

(*a*) salaries, promotions and conditions of service in individual cases;

(*b*) disciplinary matters;

(*c*) salaries, general conditions of service, etc., of particular classes of public servants.

In many cases these matters are referred to the Governor, and ultimately to the Secretary of State, for final decision.

387. As regards (*c*), we understand that the Ceylon Government have under active consideration the question of the ventilation of general as distinct from individual grievances through organisations corresponding to Whitley Councils and Joint Trade Councils in the United Kingdom, which would be set up in addition to the various existing Public Service Associations. As regards the grievances of individuals under (*a*) and (*b*) above, we assume that the constitutional right of a subject to petition the King cannot be denied to a public servant, notwithstanding the grant of full responsible government under the Crown in all matters of internal civil administration. Assuming on this basis that the right to petition must continue to be admitted, we suggest that the ladder of petition should be as follows:—

(1) the Head of Department;

(2) the Permanent Secretary to the Ministry;

(3) the Governor-General advised by the Public Services Commission (or the Judicial Services Commission, as to which see paras. 397-400 below);

(4) the Secretary of State;

(5) His Majesty the King.

It is well known that the habit of petitioning is deeply ingrained among the Ceylonese. If it is possible, we trust that regulations will be framed under which only petitions worthy of serious consideration, and which have not been rejected on a previous occasion, will rise higher than rung (3) of the ladder.

388. A number of witnesses speaking on behalf of the Public Service Associations recommended that a separate Appeal Board should be set up to deal with appeals from the Public Services Commission. We deprecate the inclusion of a further step in the ladder of appeals, which would cause additional delay in the reaching of a final decision, and we consider that, with

an independent Public Services Commission on the lines we have proposed, which will not itself institute or conduct disciplinary proceedings, no such Appeal Board is necessary.

389. As we have already explained, it will be doubly important under a new Constitution granting powers of full internal self government that the impartiality of the Public Services Commission shall be safeguarded. We note the provision in the S.P. XIV under Article 65 (1) for the imposition of severe penalties on any person who conspires or attempts to influence, or succeeds in influencing, decisions of the Public Services Commission by means of gifts, promises, threats or other inducements, and we agree with this provision so far as it goes. We consider, however, that the maintenance of the complete impartiality of the Public Services Commission is of such paramount importance, and that the temptation to lobby is so great, that the means by which influence is attempted should not be too closely defined in the new constitutional instruments. We therefore recommend that the provision should be widely drawn so as to offer the maximum discouragement to would-be canvassers.

The Auditor-General

390. Articles 83 to 85 inclusive of the Ceylon (State Council) Order in Council, 1931, provide for the appointment, duties and Annual Report of the Auditor-General. It appears to us that no important change in these provisions will be required in the new Constitution we recommend, and we note that Articles 56, 58, and 61 of the Constitutional Scheme contained in S.P. XIV do not propose any important departure from the provisions of the 1931 Order in Council.

391. We understand, however, from certain evidence placed before us that it has become the custom in recent years for the Auditor-General's Report to contain personal criticisms of the conduct of individual officers and the working of Departments, which are not strictly appropriate to such a Report. We consider that the inclusion in a published document of such criticisms, except where strictly justified, is not in the best interests of the Public Services, since the officers or Departments concerned have no means of making a public reply to the charges levelled against them however serious they may be and however damaging to their reputation.

It would hardly be appropriate to place restriction on the contents of the Auditor-General's Report in the Constitution, but we trust that in future the practice we have referred to will be discontinued.

RECOMMENDATIONS

392. Our recommendations as regards Public Officers are summarised in para. 372 above.

As regards the Public Services Commission we recommend that:—

(i) There shall be a Public Services Commission consisting of three members, one of whom shall be Chairman. Members of the Legislature, or candidates for election to either Chamber shall not be eligible for membership of the Commission. One, but not more than one, of the Commissioners shall be either a retired public servant or a public servant whose membership of the Commission would be his last appointment under the Ceylon Government.

(ii) The Chairman and members of the Public Services Commission shall be appointed by the Governor-General in his discretion.

(iii) The powers of appointment, promotion, transfer, dismissal and disciplinary control of all officers of the Public Services shall be vested in the

Governor-General for exercise on the advice of the Public Services Commission. In the case of appointments carrying an initial salary of less than Rs.2,600 a year (Rs.3,200 a year in the case of " old entrants "), these powers may be delegated to any suitable public officer.

(iv) As regards disciplinary proceedings, the procedure summarised in para. 385 above shall be followed.

(v) The ladder of petition shall be as set out in para. 387 above.

(vi) Provision, which shall be as widely drawn as possible, shall be made for the imposition of severe penalties on any person who attempts to influence the decisions of the Public Services Commission.

CHAPTER XIX

THE JUDICIAL SERVICES

393. The Constitution we propose will involve the disappearance of the Officers of State, and it will be necessary to make provision for the devolution of the functions at present carried out by the Legal Secretary. Under the Statement of Administrative Procedure these are:—

(*a*) the provision of legal advice to the Governor—the responsibility of the Legal Secretary's and the Attorney-General's Departments;

(*b*) the administration of justice—dealt with by a Department whose head is the Legal Secretary's Principal Assistant;

(*c*) the institution of criminal prosecutions and civil proceedings on behalf of the Crown—a duty of the Attorney-General's Department;

(*d*) the conduct of elections to the State Council—dealt with by a Department whose head is the Legal Secretary's Principal Assistant;

(*e*) the drafting of legislation—the duty of the Legal Draftsman's Department;

(*f*) the functions of the Public Trustee—for which the Public Trustee's Department is responsible.

394. As an Officer of State, the Legal Secretary, under the present Constitution, sits in the State Council and is thus able to obtain from the Legislature the financial provision required for the administration of justice, and to deal in the Council with cognate questions. As these functions must continue to be carried out, it will be necessary in future for a Minister to take responsibility for them in the Council. For reasons which will be set out more fully below, we do not recommend that, under the new Constitution, for some time at least, the Attorney-General and the Solicitor-General should lose their present status as public servants and become Ministers. This being so, and since it would be difficult for the Minister for Home Affairs to deal with the whole of the subjects now allocated to the Legal Secretary, we recommend the establishment of a Ministry of Justice, to which all the subjects set out above will be allocated excepting (*a*)—the provision of legal advice to the Governor-General—which we recommend should in future be a duty of the Attorney-General; and possibly (*d*)—the conduct of elections to the State Council—which might well henceforth be the responsibility of the Ministry for Home Affairs. The Ministry of Justice would also control the present Fiscals' Department.

395. In making these recommendations, we have fully considered the objections usually raised by those trained in the English tradition to the establishment of a Ministry of Justice, on the ground that a Ministry so designated is apt to blur—at least in the public mind—the line of demarcation prescribed under English practice between the Judiciary and the Executive. We realise that Ceylon is accustomed to the British system and that any departure from British principles would be likely to meet with widespread opposition

396. We would therefore make it amply clear that in recommending the establishment of a Ministry of Justice we intend no more than to secure that a Minister shall be responsible for the administrative side of legal business, for obtaining from the Legislature financial provision for the administration of justice, and for answering in the Legislature on matters arising out of it. There can, of course, be no question of the Minister of Justice having any power of interference in or control over the performance of any judicial or quasi-judicial function, or the institution or supervision of prosecutions. We have considered whether the subjects and functions in question might be distributed between other Ministries, but have reached the conclusion that it would be most conducive to the efficient handling of the administrative work in question if they were centred in a new Ministry. Since the Minister's functions would be political and administrative, it would be immaterial whether he were a lawyer or not, although the Prime Minister, if there were a lawyer of distinction among his supporters, might possibly wish to offer him the portfolio.

A Judicial Services Commission

397. As we have indicated, subject (*b*) of the present duties of the Legal Secretary—the administration of justice—might be assigned principally to the Ministry of Justice. We recommend, however, that the appointment, promotion, transfer and discipline of all District Judges, Magistrates, Commissioners of Requests and Presidents of Village Tribunals (shortly to be renamed Rural Courts) should be dealt with by a Judicial Services Commission which, like the Public Services Commission, should consist of three members. As regards the appointment of the Chief Justice and of Supreme Court Judges we agree with Article 69 (1) and with Article 36 (3) of S.P.XIV which lays down that they shall be appointed by the Governor-General acting in his discretion, i.e., after consultation with the Prime Minister whose advice he is not however bound to accept.

398. In view of the nature of its duties, high judicial office would be an essential attribute of membership of the Judicial Commission, and we recommend that the President should be the Chief Justice and the members either one present and one retired member of the Supreme Court Bench, or two present members—both to be nominated by the Governor-General acting in his discretion. We are unable to recommend that the Attorney-General should be a member of the Judicial Commission as is proposed in Article 68 (1) of S.P. XIV in view of his position as a litigant. By this, we do not wish to imply that the Attorney-General would in fact find difficulty in ignoring the success or failure of Crown cases during consideration of the future of, for example, a judicial officer; but as Sir Edward Jackson wrote on this point when Attorney-General in Ceylon ". . . . . it is difficult to be certain that no such consideration will be thought by the public to have weighed either with the Attorney-General, or with the judicial officers whose prospects are affected. . . . . "

399. It would be desirable, in view of the high office occupied by the members, that the Judicial Services Commission should be assisted by a Secretary, who might be a senior member of the Judicial Service appointed by the Governor-General on the advice of the Commission, and whose status should, we think, be not less than that of the present Principal Assistant to the Legal Secretary. The Commission would no doubt wish to delegate to the Secretary certain routine powers.

400. Disciplinary proceedings against judicial officers are at present referred to an *ad hoc* Commission appointed by the Chief Justice at the request of

* Sessional Paper V of 1931.

the Governor. This Commission, being concerned with matters of professional conduct, consists of one or more Supreme Court Judges and reports to the Public Services Commission. We recommend that, if a permanent Judicial Services Commission is appointed as we have proposed, disciplinary matters affecting judicial officers should be referred to it, and that its recommendation should be submitted direct to the Governor-General.

Legal Advice to the Governor-General

401. We have already recommended above that the Attorney-General should be charged with the duties now carried out by the Legal Secretary under this heading. We envisage that, under the Constitution we recommend, Ministers will require legal assistance in (a) the day-to-day running of their Departments, (b) the passage of Bills through Parliament, especially at the Committee stage, (c) the interpretation of existing law and in departmental matters which may involve legal proceedings, and (d) matters of high constitutional policy, on which the Cabinet as such may require advice.

402. These questions need not all be handled by the Attorney-General. We envisage that legal advice under (a) above might in future be tendered to Departments by Legal Advisors attached to the departmental staff. As regards (b), it is, we understand, the practice under the existing Constitution for the Legal Draftsman, or one of his assistants to be present in Council during the Committee stage of a Bill, where he is usually given a seat on the floor of the House next to the Minister in charge of the Bill. This arrangement might well continue. Similarly, questions arising under (c) above would be referred, as at present, to the Attorney-General or to the Solicitor-General.

403. It is in regard to (d)—matters of high constitutional policy on which the Cabinet as such may require advice—that difficulties are likely to arise. Since, under the new Constitution, Defence and External Affairs will be reserved to the Imperial Government, it will be necessary to provide for advice both to the Cabinet and to the Governor-General on points of conflict or ambiguity which may arise from time to time in connection with these subjects between the Imperial Government and the Ceylon Government, and between the Governor-General and the Cabinet.

This could be given, provided that our recommendation as to his non-political status is accepted, by the Attorney-General, who would be in much the same position as the present Legal Secretary, who is legal adviser both to the Governor and to the Board of Ministers under the present Constitution. If, however, he were a political personage as in England, the Ministers might seek his advice, but the Governor-General could not do so. It is principally for this reason that, having considered the matter carefully, we have recommended above that he should not have political status. The position may well change in future as self-government develops and the field on which clashes of opinion between the Imperial and Ceylon Governments can occur narrows.

Legal Advice to the Speaker

404. We are informed that in the early days of the present Constitution it was the custom of the Speaker to seek the advice of the Legal Secretary in open Council when points of difficulty arose out of the Standing Orders or the interpretation of the Ceylon (State Council) Order in Council. As experience of the working of the Council has developed such consultation has, we are informed, become progressively less and though the Legal Secretary still argues points of order as a Member of the State Council, the Speaker in no way feels bound to and in some cases does not, follow

his advice. In view of these developments, we consider that, so far as Parliamentary procedure is concerned, the Speaker and his staff, under the new Constitution, are unlikely to require legal assistance from any Member of the Legislature, though arrangements might be made for him to be provided with legal advice from an independent source outside the Council (cf, the Counsel to the Speaker in England).

Advice to the Governor-General on the exercise of the Royal Prerogative of Pardon

405. This is a large question in Ceylon, as not merely advice on the commutation of sentences is involved, but also advice on the innumerable petitions which are addressed to the Governor praying for the remission of sentences, however trivial. Under the present practice, advice on these matters is within the province of the Legal Secretary, who also advises, when required, in respect of the Governor's periodical reviews of long-term sentences. Under the new Constitution, we suggest that these responsibilities should devolve on the Minister of Justice.

In view of the ease with which the duty of advising the Governor-General in these matters might be turned to political ends, we would express the hope that the Minister would hesitate to tender to the Governor-General advice contrary to the recommendation he had received from the Attorney-General, the Permanent Secretary and other non-political advisers. In order to secure that he should be relieved as far as possible from political pressure, we suggest that the Minister of Justice should normally be a member of the Senate.

Subordinate staff attached to the Judicial Services

406. It has been represented to us that consideration should be given, in the reorganisation of the Public Services which will no doubt be carried out as a result of the new Constitution, to the establishment of a new branch to contain the subordinate staff attached to the Courts, including the Supreme Court. We understand that at present such officers as Secretaries to District Courts, Chief Clerks to Magistrates Courts and Stenographers attached to Courts are liable to transfer to any Department in the Public Services. In view of the specialised nature of their duties and the advantage which familiarity with legal procedure and practice would give them, we think that the institution of such a separate service would contribute to the efficient working of the Courts. The Service might be administered, subject to the Public Service Regulations, by the Minister of Justice, and might also provide the clerical and other staff of all Departments under the Minister of Justice.

RECOMMENDATIONS

407. We recommend that:—

(i) A Ministry of Justice shall be established with the functions described in paras. 393-394 above.

(ii) There shall be a Judicial Services Commission consisting of the Chief Justice as Chairman and two other members, either one present and one retired member of the Supreme Court Bench or two present members, appointed by the Governor-General in his discretion.

(iii) The Judicial Services Commission shall advise the Governor-General in the exercise of his powers of appointment, promotion, transfer, dismissal and disciplinary control of all District Judges, Magistrates, Commissioners of Requests and Presidents of Village Tribunals.

(iv) The Chief Justice and Judges of the Supreme Court shall be appointed by the Governor-General acting in his discretion.

EPILOGUE

408. The Constitution we recommend for Ceylon reproduces in large measure the form of the British Constitution, its usages and conventions, and may on that account invite the criticism so often and so legitimately levelled against attempts to frame a government for an Eastern people on the pattern of Western democracy.

We are well aware that self-government of the British Parliamentary type, carried on by means of a technique which it has taken centuries to develop, may not be suitable or practicable for another country, and that where the history, traditions and culture of that country are foreign to those of Great Britain, the prospect of transplanting British institutions with success may appear remote. But it does not follow that the invention of modifications or variations of the British form of government to meet different conditions elsewhere will be any more successful. It is easier to propound new constitutional devices and fresh constructive solutions than to foresee the difficulties and disadvantages which they may develop. At all events, in recommending for Ceylon a Constitution on the British pattern, we are recommending a method of government we know something about, a method which is the result of very long experience, which has been tested by trial and error and which works, and, on the whole, works well.

409. But be that as it may, the majority—the politically conscious majority of the people of Ceylon—favour a Constitution on British lines. Such a Constitution is their own desire and is not being imposed upon them. It is true that, if in our opinion it were manifestly unsuitable for Ceylon, our duty, notwithstanding the demands of the Ceylonese, would be so to report. We could not recommend a Constitution of the British type and then, when its failure had become apparent, merely retort—" Vous l'avez voulu, George Dandin."

410. But we think that Ceylon is well qualified for a Constitution framed on the British model, and we regard our proposals as a further stage in the evolution of the system under which Ceylon was governed prior to 1931—an evolution to some extent interrupted by the experiment of the Donoughmore Constitution of that year. It is, however, doubtful whether the reforms we now contemplate would have been appropriate or successful in 1931. But to-day, thanks to the political education and experience gained by the people of Ceylon during the period of the Donoughmore Constitution, we think that it should be well within the capacity of a future Government of Ceylon to operate a form of Constitution which does not represent a novel and strange creation, but is the natural evolution of a type of government with which the Ceylonese had for some time been familiar.

411. The State Council of Ceylon has successfully adapted to its own needs and circumstances most of the usages and practice of the British House of Commons. Its Standing Orders are based on ours, its procedure reproduces the British model in almost every detail. A British Member of Parliament would quickly find himself at home in the Parliament of Ceylon, where he would be greatly impressed by the intimate acquaintance of its members with the language, history, literature and laws of England. But he would also be somewhat astonished to hear Ministers criticising each other on the floor of the House and moving amendments hostile to the proposals of a colleague. Equally strange to him would be the sight of a Minister moving a resolution or introducing a Bill and at the same time expressing disagreement with its contents. The explanation would be that, despite his own judgment, the Minister was carrying out the instructions of his Executive Committee,

These aberrations result from the present Constitution, with its system of Executive Committees and division of the various Ministries into water-tight compartments, each of them, as it were, a separate little Cabinet.

412. The proposals we have put forward in this Report aim at restoring the method of government to a more normal channel and creating the Ministerial responsibility which is, in our view, essential to Parliamentary government. It must be borne in mind that a number of the political leaders of Ceylon have been educated in England and have absorbed British political ideas. When they demand responsible government, they mean government on the British Parliamentary model and are apt to resent any deviation from it as " derogatory to their status as fellow citizens of the British Commonwealth of Nations and as conceding something less than they consider is their due.* To put it more colloquially, what is good enough for the British is good enough for them.

413. We realise that proposals for the reform of a country's Constitution must be conditioned by its history and traditions. We are also well aware that the people of Ceylon have not reached the same stage of political development as the people of Britain, and that what may be appropriate for the latter may not yet be appropriate for the Ceylonese. But we think it better to devise a Constitution somewhat in advance of the stage already reached rather than behind it, trusting in the power of education and the lessons of experience to promote further development. The enlargement of liberty is always attended by risk, but it is well to bear in mind a wise observation attributed to Aristotle, " The only way of learning to play the flute is to play the flute."

414. The goal of the people of Ceylon is Dominion status, and we understand that to be in accordance with the policy of His Majesty's Government. But for reasons given in various sections of our Report, it is clearly not possible to reach that goal in a single step. As regards those features of the Constitution we recommend which fall short of Dominion status, the problem of the Defence of Ceylon is invested with particular importance by reason of her geographical position, and we do not believe that there is any serious body of opinion in the Island which questions the need for its dependence upon the United Kingdom for some time to come in matters of Defence and, closely linked with Defence, of External Affairs.

415. We have received little, if any, criticism of the proposal to place the subject of Currency within the category of Reserved Bills and, as regards the protection of the minorities, we feel sure that in view of their size and number and their relations with the majority, moderate opinion will recognise the desirability of enacting certain safeguards which will serve to allay their apprehensions, but which it will be unnecessary, we trust, ever to employ.

416. Throughout our deliberations, our object has been to make proposals which would confer upon Ceylon self-government under a Constitution of her own devising. For that reason, we have endeavoured to put forward recommendations which harmonise with the salient features of the Constitution formulated by the Ceylon Ministers and which at the same time, recognise the legitimate rights of the minorities.

We believe that our recommendations, if adopted, will enable Ceylon to enjoy forthwith a full and ample measure of self-government, and in due course to assume the status of a Dominion, thereby bringing nearer the ultimate ideal of British statesmanship, the fusion of Empire and Commonwealth.

* The Right Honourable C. R. Attlee's Draft Report laid before the Joint Committee on Indian Constitutional Reform, 18th June, 1934, para. 18.

ACKNOWLEDGMENTS

417. We cannot conclude this Report without some expression of our deep gratitude to the members of our staff who have helped in its preparation.

418. Our work in Ceylon was based upon the efficient office organisation provided by our Chief Clerk, Mr. C. L. N. Toussaint, ably supported by Mr. W. A. S. Canagasabey, Second Clerk, both of the Ceylon General Clerical Service, and Mr. N. W. B. Jansze, Chief Stenographer, who, with a number of clerical and other officers lent by various Departments of the Ceylon Government, formed a workmanlike team of Burghers, Tamils and Sinhalese in whose friendly and successful co-operation we see a happy augury for the future of Ceylon.

419. To Mr. Toussaint fell the whole responsibility for registration and custody of the Commission's voluminous correspondence, and many duties connected with our Public Sessions. On all occasions he carried out these varied tasks with exemplary zeal and efficiency, and the detailed indices he prepared for the memoranda and evidence submitted to us have contributed in no small measure to the expeditious preparation of this Report. Our crowded programme threw a heavy strain on Mr. Toussaint and his colleagues, who were on occasions compelled to work on Sundays and Public Holidays after long hours of overtime. All this they did with the greatest willingness, and we here place on record our high appreciation of their services and of the co-operation of the Ceylon Government in releasing them.

420. The heaviest burden of our Public Sessions was borne by our Official Reporter, Miss N. L. Sheppard, who on numerous occasions reported a four-hour Session single-handed and with complete accuracy. In the most favourable circumstances this would have been a remarkable achievement; in the heat of Colombo and the poor acoustics of the Town Hill it deserves a special tribute. In addition to her work of reporting, Miss Sheppard contrived to produce the typescript of the evidence with great rapidity, so that it was complete and available for study some time before we left Colombo. For these services, and for her helpful contribution to the success of many of our social engagements, we express our grateful thanks.

421. Miss Sheppard's only relief was provided by Mr. Murugupillai of Colombo, and by the Hansard Reporters of the State Council, for the loan of whose services on several occasions we are indebted to the Speaker, the Hon. Sir Waitialingam Duraiswamy. To him, and the Hon. Sir Robert Drayton, Chief Secretary, and the Hon. Mr. D. S. Senanayake, Leader of the State Council, our thanks are also due for having so kindly made available to us offices in the State Council Building during a period of great shortage.

422. On our return to the United Kingdom, we were glad to take advantage of accommodation offered to us in the Welsh National Temple of Peace and Health, Cathays Park, Cardiff, for the writing of our Report. We are greatly indebted to the Welsh National Council of the League of Nations Union, and to Major Edgar Jones, O.B.E., M.A., Warden of the Temple, for thus enabling us to enjoy all the advantages of modern office accommodation in delightful surroundings which the Temple provides.

423. We owe a special word of gratitude to our Secretary-Shorthandwriter, Miss P. M. Miller, whose services were lent to us by the Air Ministry. Miss Miller carried out a variety of duties, social as well as official, in London, in Ceylon and at all stages of our many journeys, with admirable efficiency and success. She handled our very considerable social and personal correspondence with great skill and was largely responsible for the arrangement of

our programme of Public Sessions to the mutual satisfaction alike of ourselves and the witnesses who appeared before us. The rapidity and accuracy with which she has produced the various drafts of our Report have contributed greatly to the shortening of the time required for its completion.

424. Throughout the period of our stay in Ceylon liaison between the Commission and the Ceylon Government on all matters was maintained by Mr. E. R. Sudbury, O.B.E., of the Ceylon Civil Service, to whose unrivalled local knowledge and experience we owe much useful advice on both official and personal matters. In addition to supervising our finances and arranging some of our tours, Mr. Sudbury was indefatigable in the production and correlation of the various statistics and other data we found it necessary to call for from time to time, which in many cases involved detailed and painstaking research; and our sincere thanks are due to him for his valuable help, and to the Ceylon authorities for the loan of his services.

425. In conclusion, we desire to lay particular emphasis upon the invaluable services rendered to our Commission and ourselves by our Secretary, Mr. Trafford Smith, and to express our deep sense of obligation to him. From the moment of our appointment and throughout all our labours in Ceylon and at home, we have been immensely impressed by his powers of organisation and by his tireless industry, combined with unfailing tact and discretion and constant cheerfulness and good humour.

His knowledge of official procedure and Colonial practice was of the utmost assistance to us, and we are greatly indebted to him for the help which he has given to us in the drafting of our Report. We are glad to be able to pay this unstinted tribute to the outstanding services which he has rendered to His Majesty's Government and to ourselves.

426. We now have the honour to submit our Report for your consideration.

SOULBURY.
J. F. REES.
F. J. BURROWS.

TRAFFORD SMITH, *Secretary*.
11th July, 1945.

SUMMARY OF RECOMMENDATIONS

NOTE.—In the case of many features of the Constitution, the Commission has confined itself to expressing agreement with the relevant provisions of the constitutional scheme contained in Ceylon Sessional Paper XIV of 1944. No recommendation as to these features appears below.

THE FRANCHISE (Chapter X)

1. Universal suffrage on the present basis shall be retained.

IMMIGRATION (Chapter XI)

2. Any Bill relating solely to the prohibition or restriction of immigration into Ceylon shall not be regarded as coming within the category of Bills which the Governor-General is instructed to reserve for the signification of His Majesty's pleasure; provided that the Governor-General may reserve any such Bill if in his opinion its provisions regarding the right of re-entry of

persons normally resident in the Island at the date of the passing of the Bill by the Legislature are unfair or unreasonable.*

3. Any Bill relating solely to the franchise shall not be regarded as coming within the category of Bills which the Governor-General is instructed to reserve for the signification of His Majesty's pleasure.†

4. The Parliament of Ceylon shall not make any law rendering persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable, or confer upon persons of any community or religion any privileges or advantages which are not conferred on persons of other communities or religions.‡

5. Any Bill, any of the provisions of which have evoked serious opposition by any racial or religious community and which, in the opinion of the Governor-General is likely to involve oppression or serious injustice to any such community, must be reserved by the Governor-General for His Majesty's assent.§

Representation (Chapter XIII)

6. A Delimitation Commission shall be appointed by the Governor-General consisting of three persons, one of whom shall be Chairman; and in making these appointments the Governor-General shall act in his discretion, avoiding as far as possible the selection of persons connected with politics.

7. The Delimitation Commission so appointed shall divide each Province of the Island into a number of electoral districts, ascertained as provided in Article 13 (2) and (3) of S.P. XIV but so that, wherever it shall appear to the Commission that there is a substantial concentration in any area of a Province of persons united by a community of interest, whether racial, religious or otherwise, but differing in one or more of these respects from the majority of the inhabitants of that area, the Commission shall be at liberty to modify the factor of numerical equality of persons in that area and make such division of the Province into electoral districts as may be necessary to render possible the representation of that interest.

8. The Commission shall consider the creation of multi-member constituencies in appropriate areas.

9. Within one year after the completion of every census, the Governor-General shall appoint a Delimitation Commission composed as aforesaid but (except in the case of the Commission to be appointed after the census of 1946) steps shall be taken before such appointment to review the working of the scheme of representation which we recommend.

The Legislature (Chapter XIV)

10. There shall be a Second Chamber consisting of thirty members, which shall be called the Senate. Its members shall be known as Senators.

11. Fifteen of the seats of the Senate shall be filled by persons elected by members of the First Chamber in accordance with the system of proportional representation by means of the single transferable vote; and fifteen shall be filled by persons chosen by the Governor-General in his discretion.

12. The minimum age for entry to the Senate shall be 35, and persons chosen by the Governor-General shall either have rendered distinguished public service or be such persons eminent in education, law, medicine, science,

* See Recommendation 32 (ii) (*b*), relating to the Governor-General's powers.
† See Recommendation 32 (ii) (*c*) relating to the Governor-General's powers.
‡ See Recommendation 32 (v) relating to the Governor-General's powers.
§ See Recommendation 33 (*a*).

engineering, banking, commerce, industry or agriculture as the Governor-General, after consultation with the representatives of the appropriate profession or occupation, may in his discretion choose.

13. The disqualifications for membership of the Senate shall be the same as those for membership of the First Chamber.

14. The Senate shall choose one of its members to be President, who shall take precedence as near as may be in accordance with the usages of the United Kingdom. During any absence of the President, the Senate shall choose one of its members to perform his duties.

15. Not less than two Ministers shall be members of the Senate. If Parliamentary Secretaries are appointed, not more than two shall be members of the Senate.

16. The Senate shall have no power to reject or amend or delay beyond one month a Finance Bill; and if a Bill other than a Finance Bill is passed by the First Chamber in two successive sessions and is rejected by the Senate in each of those sessions, the Bill shall, on its second rejection, be deemed to have been passed by both Chambers.

17. A Finance Bill shall be defined in accordance with precedents already existing in the British Commonwealth, and the Speaker of the First Chamber shall, after consultation with the Attorney-General, be empowered to certify whether a Bill is in his opinion a Finance Bill.

18. There shall be power to originate Bills other than Finance Bills in the Senate.

19. The normal term of office of a Senator shall be nine years, but five elected and five nominated Senators (i.e., one-third of the total membership of the Senate) shall retire every three years and be eligible for re-election or re-nomination. The identity of the members called upon to retire at the end of the third and sixth year after the date of the formation of the Senate under the new Constitution shall be determined by lot. Those persons who are elected or nominated after the end of the third or sixth year will hold office for nine years and a draw by lot will not be required after the sixth year. A person elected or nominated to fill a casual vacancy occurring at any time will hold office for the remainder of the term of office of the person he replaces.

The First Chamber (Chapter XV)

20. There shall be a First Chamber consisting of 101 members; 95 of those members shall be elected and 6 nominated by the Governor-General.

21. The First Chamber shall be known as the House of Representatives, and its members shall be known as Members of Parliament.

22.—(*a*) For the purpose of qualifying for membership of the First Chamber, ability to speak, read and write English shall no longer be required.

(*b*) Stricter rules shall be applied in the matter of governmental contracts, etc. in which Members of Parliament are interested.

(*c*) Article 9 (I) (*f*) of the Ceylon (State Council) Order in Council, 1931, shall be retained, subject to the modifications indicated in para. 318.

(*d*) In the case of a free pardon, the period of disqualification of a Member of Parliament shall cease from the date of the granting of that pardon.

(*e*) In addition to the provisions for disqualification contained in the Ceylon (State Council) Order in Council, 1931, provision shall be made for the disqualification of a Member of Parliament for accepting a bribe or gratification offered with a view to influencing his judgment as a Member of Parliament, provided that any allowance or payment made to a Member of

Parliament by any Trades Union or other organisation solely for his maintenance shall not be deemed to be a bribe or gratification within the terms of this provision.

(*f*) Article 9 (*a*) of the Ceylon (State Council) Order in Council, 1931, shall be retained.

23. Every House of Representatives, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting.

Both Chambers

24. A Member of either Chamber shall be incapable of being chosen or of sitting as a member of the other Chamber.

Sessions of Parliament

25. The rules and conventions obtaining in the United Kingdom as to the frequency with which Parliament is summoned, and the length of sessions shall be followed in Ceylon, and provision shall accordingly be made in the Constitution.

26. The Parliament of Ceylon shall consist of the King, the Senate and the House of Representatives of Ceylon: and an Act of Parliament shall be expressed to be enacted by the King by and with the advice and consent of the Senate and the House of Representatives of Ceylon.

THE EXECUTIVE (CHAPTER XVI)

27. The Executive Committees and the three Officers of State (the Chief Secretary, Legal Secretary and Financial Secretary) shall be abolished.

28. In place of the present Board, there shall be a Cabinet of Ministers responsible to the Legislature, of whom one appointed by the Governor-General shall be Prime Minister. The Ministers other than the Prime Minister shall be appointed by the Governor-General on the recommendation of the Prime Minister.

29. The functions to be assigned to each Minister shall be determined by the Prime Minister, subject to recommendation 42 below.

30. The Governor-General may, on the recommendation of the Prime Minister, appoint Parliamentary Secretaries, but the number so appointed shall not exceed the number of Ministers.

31. A Permanent Secretary to each Ministry shall be appointed by the Governor-General on the recommendation of the Public Services Commission.

THE GOVERNOR-GENERAL (CHAPTER XVII)

32. The classes of Bills which the Governor-General is instructed to reserve for the signification of His Majesty's pleasure shall be as follows:—

(i) Any Bill relating to Defence.

(ii) Any Bill relating to External Affairs, provided that Bills of the following character shall not be regarded as coming within this category:—

(*a*) Any Bill relating to and conforming with any trade agreement concluded with the approval of His Majesty's Government by Ceylon with other parts of the Commonwealth.

(*b*) Any Bill relating solely to the prohibition or restriction of immigration* into Ceylon, provided that the Governor-General may reserve any such Bill, if in his opinion its provisions regarding the right of re-entry of persons normally resident in the Island at the date of the passing of the Bill by the Legislature are unfair or unreasonable.

(*c*) Any Bill relating solely to the franchise.†

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* See Recommendation 2 relating to Immigration.

† See Recommendation 3 relating to Franchise.

(*d*) Any Bill relating solely to the prohibition or restriction of the importation of, or the imposition of import duties upon, any class of goods, provided that such legislation is not discriminatory in character.

(iii) Any Bill affecting currency or relating to the issue of bank notes.

(iv) Any Bill of an extraordinary nature and importance whereby the Royal Prerogative or the rights and property of British subjects not residing in Ceylon or the trade or transport or communications of any part of the Commonwealth may be prejudiced.

(v) Any Bill any of the provisions of which have evoked serious opposition by any racial or religious community and which, in the opinion of the Governor-General, is likely to involve oppression or serious injustice to any such community.*

(vi) Any Bill which repeals or amends any provision of the Constitution, or which is in any way repugnant to or inconsistent with the provisions of the Constitution, unless the Governor-General shall have been authorised by the Secretary of State to assent thereto.

(vii) Any Bill which is repugnant to or inconsistent with the provisions of a Governor-General's Ordinance.

33. The Order in Council embodying the Constitution shall provide that:—

(*a*) The Parliament of Ceylon shall not make any law rendering persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable, or confer upon persons of any community or religion any privileges or advantages which are not conferred upon persons of other communities or religions.†

(*b*) Parliament shall not make any law to prohibit or restrict the free exercise of any religion; or to alter the Constitution of any religious body except at the request of the governing authority of that religious body.

(*c*) His Majesty in Council shall have power to legislate for Ceylon by Order in Council in regard to External Affairs and Defence.

34. The existing situation as regards the power of the Ceylon Legislature to make laws having extra-territorial operation shall be maintained.

35. Certification of all Bills prior to submission to the Governor-General for assent shall be given by the Attorney-General.

36. In summoning, proroguing and dissolving Parliament, and in the appointment and dismissal of Ministers, the Governor-General shall act in accordance with the conventions applicable to the exercise of similar functions by His Majesty in the United Kingdom.

37. In the event of the absence of the Governor-General from Ceylon, or of his being prevented from acting, the Chief Justice shall administer the Government unless there shall have been some other appointment by Dormant Commission.

38. Communications from His Majesty's Government in the United Kingdom to the Government of Ceylon shall in all appropriate cases be addressed to the Prime Minister.

39. Under the new Constitution the Governor shall bear the title " Governor-General " and shall receive an annual salary of £8,000 sterling.

Defence

40. The Governor-General shall have power to make laws to be called Governor-General's Ordinances dealing with External Affairs and Defence.

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* See Recommendation 5.

† See Recommendation 4.

41. The ultimate allocation of any expenditure incurred in consequence of action taken in exercise of special powers relating to Defence shall be settled by negotiation by His Majesty's Government and the Government of Ceylon.

42. There shall be a portfolio of Defence and External Affairs held by the Prime Minister.

The Maldives.

43. The Order-in-Council embodying the Constitution shall include an exempting provision in respect of the Maldive Islands, similar to Article 2 of the Ceylon (State Council) Order in Council, 1931.

THE PUBLIC SERVICES (CHAPTER XVIII)

44. The right to retire on pension with compensation for loss of career already held by certain classes of officers (i.e. those whose appointments are subject to approval by the Secretary of State) appointed before 17th July, 1928, shall be secured to them afresh under the new Constitution.

45. In the case of all officers of the classes specified (i.e. whose appointments are subject to the approval of the Secretary of State) appointed or selected for appointment after 16th July, 1928, and before the publication of this Report, a similar right of retirement on pension, with compensation for loss of career, shall be granted but to be exercised within a period of three years from the date of promulgation of the new Constitution.

46. Retirement on terms at least equal to " abolition of office " terms shall be granted to all public officers whose posts cease to exist by reason of the coming into operation of the New Constitution.

47. The pension rights (including the prospective pensions of widows and orphans) of officers who have already retired, of officers still in the Public Services, and of officers who have accepted or may accept transfer from the Ceylon Public Services but have earned a proportion of their ultimate retiring pension by service in Ceylon, shall be suitably safeguarded.

Public Services Commission

48. There shall be a Public Services Commission consisting of three members, one of whom shall be Chairman. Members of the Legislature, or candidates for election to either Chamber, shall not be eligible for membership of the Commission. One, but not more than one, of the Commissioners shall be either a retired public servant or a public servant whose membership of the Commission will be his last appointment under the Ceylon Government.

49. The Chairman and members of the Public Services Commission shall be appointed by the Governor-General in his discretion.

50. The powers of appointment, promotion, transfer, dismissal and disciplinary control of all officers of the Public Services shall be vested in the Governor-General for exercise on the advice of the Public Services Commission. In the case of appointments carrying an initial salary of less than Rs.2,600 a year (Rs.3,200 a year in the case of " old entrants "), these powers may be delegated to any suitable public officer.

51. As regards disciplinary proceedings and the hearing of appeals by public servants in respect of salaries, promotions, conditions of service and disciplinary matters, the following procedure shall be adopted:—

(i) Where under the present Constitution the Head of Department can institute and complete disciplinary proceedings without reference to any higher authority, the officer in the position of Head of Department under the new Constitution (not the Permanent Secretary) shall continue to be able to institute and complete such proceedings.

(ii) Where under the present Constitution the Head of Department can only institute proceedings and complete an enquiry, but is not empowered to take a decision and must therefore refer the proceedings to the Public Services Commission, who in turn advise the Governor as to the finding and final punishment, if any, similar proceedings under the new Constitution shall continue to be submitted to the Public Services Commission through the Permanent Secretary to the Ministry, who will make his own recommendations; but the decision will rest with the Public Services Commission without further reference to the Governor-General.

(iii) Where under the present Constitution disciplinary proceedings can be instituted only with the approval of the Governor, they shall be instituted under the new Constitution only with the approval of the Public Services Commission. The enquiry shall be conducted by a person or persons specially appointed, and the findings shall be submitted to the Public Services Commission who shall then make a recommendation to the Governor-General.

(iv) In regard to such disciplinary cases as now come before the Public Services Commission under the present Constitution, the Commission shall be a reviewing or confirming authority under the new Constitution, and shall act as a Board of Appeal.

52. The ladder of petition shall be as follows:—

(1) the Head of Department;
(2) the Permanent Secretary to the Ministry;
(3) the Governor-General advised by the Public Services Commission (or the Judicial Services Commission, as to which see below);
(4) the Secretary of State;
(5) His Majesty the King.

53. Provision, which shall be as widely drawn as possible, shall be made for the imposition of severe penalties on any person who attempts to influence the decisions of the Public Services Commission.

The Judicial Services (Chapter XIX)

54. A Ministry of Justice shall be established with the following functions:—

(i) The administration of justice.
(ii) The institution of criminal prosecutions and civil proceedings on behalf of the Crown.
(iii) The drafting of legislation.
(iv) The functions of the Public Trustee.
(v) Control of the Fiscals' Department.

(Note.—The conduct of elections to the State Council might also fall to the Ministry of Justice if not taken over by the Ministry for Home Affairs.)

55. There shall be a Judicial Services Commission consisting of the Chief Justice as Chairman and two other members, either one present and one retired member of the Supreme Court Bench or two present members, appointed by the Governor-General in his discretion.

56. The Judicial Services Commission shall advise the Governor-General in the exercise of his powers of appointment, promotion, transfer, dismissal and disciplinary control of all District Judges, Magistrates, Commissioners of Requests and Presidents of Village Tribunals.

57. The Chief Justice and Judges of the Supreme Court shall be appointed by the Governor-General acting in his discretion.

APPENDIX I.

CEYLON.

SESSIONAL PAPER XIV.—1944.

SEPTEMBER, 1944.

REFORM OF THE CONSTITUTION

(I)

Explanatory Memorandum dated 11th September, 1944, on the Constitutional Scheme formulated by the Ministers in accordance with His Majesty's Government's Declaration of 26th May, 1943, and subsequently withdrawn.

THE task which the Ministers undertook in the statement read by the Leader in the State Council on the 8th June, 1943,* was the production of a Constitution which satisfied the conditions set out in the Declaration issued by His Majesty's Government on 26th May, 1943, as interpreted in the Ministers' Statement. The State Council at its meeting on the 26th March, 1942, had resolved that " This Council demands the conferment of Dominion Status on Ceylon after the war and requests that the British Government should give an assurance to that effect as has been done in the case of certain other British possessions." The Ministers forwarded this resolution to the Governor for transmission to the Secretary of State, stating that they were in entire accord with it.‡ The Declaration of 1943 was a reply to this and other representations. The Ministers would have preferred to have drafted a Constitution of their own but, for the reasons given in the Ministers' Statement, they thought that the offer made in the Declaration should be accepted.

The Form of the Constitution.

2. The Declaration of 1943 stated that once victory was achieved, His Majesty's Government would " proceed to the examination by a suitable commission or conference of such detailed proposals as the Ministers may in the meantime have been able to formulate in the way of a complete constitutional scheme." It was also stated that the grant of " full responsible Government under the Crown in all matters of internal civil administration " would be " by Order of His Majesty in Council." The Ministers thought it desirable that they should make their proposals in the form in which they would be put into effect if the two conditions stated in paragraph (7) of the Declaration of 1943 were satisfied, namely, upon His Majesty's Government being satisfied that they were in full compliance with paragraphs (1) to (6) of the Declaration, and upon their subsequent approval by three quarters of all the members of the State Council, excluding the Officers of State and the Speaker. Accordingly, the draft takes the form of an Order in Council.

3. As Article 3 provides, this Order in Council would supersede the Ceylon (State Council) Order in Council, 1931, under which the present Constitution operates. It would take effect on the date of publication in the *Gazette,* which would be " the date of operation ". A great deal would have to be done, however, before the present Constitution was superseded. First, it would be necessary to appoint a Delimitation Commission and to secure the delimitation of the new electoral districts under Articles 12 and 13. Secondly, it would be necessary to get a new Elections Order in Council made—referred to in Article 16 (2) as the Ceylon (Elections) Order in Council, 1944—and to get registers of electors prepared in accordance with its terms. Thirdly, the State Council would be dissolved and a Parliament summoned under Article 24. Fourthly, a general election would be held under Article 16 and additional members would be appointed under Article 17. The machinery of the Constitution would then be in operation, and the Governor or Governor-General would be able to appoint a Prime Minister and other Ministers under Article 43. Accordingly, a Proclamation would be issued fixing an " appointed day ". On that day the Ceylon (State Council) Order in Council, 1931, would be revoked in accordance with Article 3 (except for its financial provisions which would, under Article 55 continue in operation until the end of the financial year); the functions of the Officers of State and Executive Committees would be transferred to Ministers under Article 53 (1); and generally the new Constitution, other than its financial provisions, would come into operation.

The Question of a Second Chamber

4. The Ministers came to the conclusion that the question of a Second Chamber was so controversial that a 75 per cent. majority could not be obtained for any such plan. Not only would there be controversy whether a Second Chamber was desirable

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* Hereinafter referred to as " the Ministers Statement ". See S.P. XVII of 1943, No. (2).
† Hereinafter referred to as " the Declaration of 1943 ". See S.P. XVII of 1943, No. (1).
‡ S.P. XIII of 1943, Nos. 14 and 18A.

but also, if the majority opinion favoured a Second Chamber, there would be controversy over its composition. It may be noted that even in the United Kingdom there has been argument on these questions since 1860; and for nearly forty years the preamble to the Parliament Act has stated an intention to create a " popular " Second Chamber in place of the House of Lords. A conference in 1917 failed to reach any kind of agreement, and since 1935 one of the political parties has had the abolition of the House of Lords as one of the items of its programme. If there was such disagreement in Great Britain there was unlikely to be greater agreement in Ceylon, which has never had a bicameral legislature. Accordingly, the Ministers decided that the simplest solution would be to retain a unicameral legislature but to authorise—by Article 6—the new legislature to establish a Senate by ordinary legislation. In that way a simple majority of the members voting would be required.

5. In formulating their tentative proposals, the Ministers agreed that the minority communities ought to have additional weightage, but it was also agreed that every member should be elected as a Ceylonese, not as a Sinhalese, a Tamil, a Muslim, a Burgher, an Indian or a European. The Ministers agreed with the Donoughmore Commission that communal representation as such was undesirable.

6. A consideration of the distribution of the communities produced the solution which is embodied in Article 13. The great majority of the Sinhalese are to be found in the densely populated areas, especially in the Western and Southern Provinces. The great majority of the Tamils and Muslims are to be found in the less densely populated areas. Also, it was desirable that the Kandyan rural population should have special consideration. It will be seen that these aims can be attained without communal representation by giving weightage to AREA as well as to population.

7. The Ministers decided that the legislature should consist of approximately one hundred members. Article 13 therefore provides that each Province shall have one member for every 75,000 inhabitants at the census of 1931, with an additional member for every 1,000 square miles of area. The result would be as follows:—

	Number for Population.	Number for Area.	Total.
Western Province	19	1	20
Central Province	13	2	15
Southern Province	10	2	12
Northern Province	5	4	9
Eastern Province	3	4	7
North-Western Province	7	3	10
North-Central Province	1	4	5
Uva Province	4	3	7
Sabaragamuwa Province	8	2	10
Total ...	70	25	95

The delimitation of electoral districts within the Provinces would be undertaken by a Delimitation Commission appointed (Article 12) by the Governor and consisting of the Chief Justice or a Puisne Judge as Chairman and two other persons who are not to be members of the State Council. The Commission is directed by Article 13 (3) to provide " that each electoral district in the Province shall have as nearly as may be an equal number of persons, but shall also take into account the transport facilities of the Province, its physical features and the community or diversity of interest of its inhabitants ". This community or diversity of interest may be economic or it may be social. On the average, each constituency would be about one-half the size of the present constituencies; but in the less thickly populated Provinces it would be much less than one-half.

Thus, the North-Central Province would have five members instead of one, and the Northern Province and the Eastern Province together would have 16 members instead of 6. Accordingly, it would be much easier than it is at present to provide representation for homogeneous economic and social groups.

8. Articles 14 and 15 provide for a revision of constituencies after every census so that, as the population grows, the electoral districts would be adapted accordingly. If there were a census in 1946 it is probable that the number of electoral districts would be increased to 105.

9. No system of territorial representation would necessarily ensure that all sections of the community would be adequately represented. Article 17 therefore authorises the Governor-General, acting in his discretion, to appoint up to six members where he considers that any important interest is not adequately represented. In accordance with Article 36 (3), where the Governor-General acts in his discretion he must refer the matter to the Prime Minister for advice, but he is not bound to accept that advice.

Representation.

10. The Ministers gave long and anxious consideration to the question of representation in the legislature. It was incumbent on them to produce a scheme; but they saw no reason why the whole Constitution should fail if the necessary majority could not be obtained in the State Council. Accordingly, they informed His Excellency the Governor as follows:—

"Representation.—This question is dealt with in Articles 12 and 13. The Ministers propose to put those Articles separately to the State Council. If those proposals do not receive the three-fourths majority and if the requisite majority cannot be obtained for any other alternative proposal, the Ministers propose to move in the State Council that a Commission be appointed by Your Excellency to determine the distribution of electoral districts in the Island in accordance with principles, which will be set out in the motion.

"The Hon. Mr. Mahadeva, Minister of Home Affairs, wishes it to be stated that he is not in agreement with the proposals regarding the question of representation and is of the opinion that the entirety of this question, which is a matter of considerable controversy, should be settled by a Royal Commission."

The Legislature.

11. The names chosen for the legislature, the First Chamber and the Second Chamber (if one was established) were respectively the Parliament of Ceylon, the Council of State, and the Senate. In accordance with Dominion practice the King (and not the Governor-General) is part of the legislature though for most purposes he acts through the Governor-General. Accordingly, Article 5 provides that the Parliament of Ceylon shall consist of the King and the Council of State; but if Parliament provides by law for the establishment of a Senate, Parliament shall consist, so long as such law is in operation, of the King, the Senate, and the Council of State.

12. The legislative power conferred by Article 7 is the widest possible power—"authority as ample as the Imperial Parliament in the plenitude of its power could bestow". It is in fact limited only by:—

(*a*) such Acts of the Parliament of the United Kingdom as extend or may extend to Ceylon;

(*b*) the provisions of Article 8; and

(*c*) the provisions of Article 10 (2) which require a two-thirds majority for a constitutional amendment.

The provisions usually inserted in colonial constitutions, empowering the King in Council to revoke or amend the Constitution, has not been included in the draft, which could therefore be amended only by Imperial legislation or in accordance with Article 10. It may be noted that Parliament is not forbidden to legislate on matters on which the Governor-General is also authorised to legislate in accordance with the Declaration of 1943.

13. Article 8 is a general protection to minorities, whether racial, social or religious. This being a restriction on legislative power, it would be for the courts to say whether the Article was infringed, and they could declare an Act of the Ceylon Parliament to be invalid if it contravened the Article. It is based on a provision in the Constitution of Northern Ireland.

14. Article 10 (1) gives a power to repeal or amend any provision of an Order-in-Council in force in the Island. Orders-in-Council under Imperial legislation are excluded because the King cannot by a Prerogative Order-in-Council (such as this Constitution would be) amend or revoke an Order-in-Council authorised by the Imperial Parliament. Since no power for the purpose is reserved, Orders-in-Council applying to Ceylon could be made after this Constitution took effect only if they were authorised by Act of the Imperial Parliament.

15. Article 10 (2) contains the general power of constitutional amendment. There are specific powers elsewhere; thus Article 6 (2) authorises the amendments necessary to create a Senate, and these can be passed by a simple majority; again, the phrase "until Parliament otherwise provides" (*e.g.*, in relation to privileges in Article 30) implies that Parliament can otherwise provide by simple majority. Where there is no such special provision, the amendment must be express and it must be passed by two-thirds of the whole Council. Thus, if there were 95 elected members and 6 nominated members, it would be necessary to get 67 votes for a constitutional amendment.

The Council of State.

16. Under Article 18, any person who is qualified to be an elector, and not disqualified, might be elected or appointed to the Council. Attention is particularly drawn to the following points regarding the rules relating to disqualifications:—

(*a*) ability to speak, read and write English is no longer required;

(*b*) the rule as to contracts has been tightened up;

(*c*) disqualification on account of imprisonment is limited to sentences of three months or longer and to certain offences only (mainly of a non-political nature) under the Penal Code; the period of such disqualification is also limited to a period of seven years after expiry of the sentence;

(*d*) the disqualification for accepting a bribe or a gratification offered with a view to influencing a Member's judgment as a Member of the Council is a new provision.

17. Since the Council of State will not be an executive body, the practice of having a continuous session which is peculiar to the State Council, is brought to an end. A Parliament may last for five years, but may be dissolved before then. There will, however, be a session every year, as in the case of the Parliaments of the United Kingdom and the Dominions, each session being terminated by a "prorogation" which brings current business to an end and requires the issue of a Proclamation for a new session. This is necessary to clear the Order Paper of derelict and obsolete motions and to enable the Cabinet (who will be responsible for all Government business) to plan the official business of each session. The Council of State will itself provide for adjournment within the limits of a session. The details are set out in Articles 25 to 27.

The Governor-General.

18. The Ministers assumed that the Governor would be replaced by a Governor-General, and the standard clauses of Dominion Constitutions have been inserted in Articles 33 to 35. The self-government to be conferred under the Declaration of 1943, is, however, self-government only "in all matters of INTERNAL CIVIL administration." In order to satisfy paragraphs (2) to (6) of the Declarations as interpreted by the Ministers' Statement, it has been necessary to insert unusual powers in Articles 38 and 39, though they have been carefully defined by these Articles and Article 40. These powers the Governor-General must be able to exercise according to his discretion and subject to instructions from the Secretary of State. In certain other cases, too, it is necessary to give the Governor-General a discretion (though not subject to instructions from London) in order that minority interests may not feel that there is any likelihood of their being prejudiced under the new Constitution. Accordingly, the Governor-General may also act in his discretion in the following matters:

(*a*) Appointment of Delimitation Commission (Article 14);

(*b*) Appointment of Additional (minority) members to the Council of State (Article 17);

(*c*) Appointment and removal of members of the Public Services Commission (Article 62);

(*d*) Appointment and removal of members of the Judicial Commission (Article 68);

(*e*) Appointment of Chief Justice and Puisne Judges of the Supreme Court (Article 68).

The intention in these cases is "to take the appointments out of politics". In accordance with Article 36 (3), the Governor-General will consult the Prime Minister, but will not be bound to accept the advice and will act in his discretion.

19. In respect of certain classes of appointments to be made by the Governor-General, it was thought that it should be specifically stated on whose recommendation the appointments should be made. These matters are regulated by long-standing conventions in Great Britain, but no such conventions have as yet been established in Ceylon owing to the peculiar position of the Officers of State and the Executive Committees. The following are the cases:—

(*a*) Clerk of Parliament (Article 32);

(*b*) Ministers other than Prime Minister (Article 43);

(*c*) Deputy Ministers (Article 45);

(*d*) Secretary to the Cabinet (Article 52);

(*e*) Permanent Secretaries (Article 53);

(*f*) Secretary to the Public Services Commission (Article 63);

(*g*) Public Officers (Article 64);

(*h*) Judicial Officers (Article 69).

Except in respect of (*f*), (*g*) and (*h*) this is merely a formal enactment of the British conventions while (*f*), (*g*) and (*h*) have been specially provided for in order that minority interests may be assured of absolute impartiality in the filling of public appointments. In all these cases Article 36 (2) provides that the Governor-General shall act only in the recommendation of the person or body authorised to make it, but may refer the recommendation back to that person or body.

20. All other cases are covered by Article 36 (1), which simply applies the British conventions relating to responsible government. These conventions are also in operation in the Dominions and there are plenty of precedents (which have been collected in the books) to cover all except the most unusual circumstances. These precedents would be applied in Ceylon until a definite set of Ceylon precedents had been established.

21. Article 37 provides for the royal assent to Bills in accordance with similar provisions in the Dominion Constitutions, except that no power to reserve for the King's assent has been inserted. Such reservation is no longer practised in the Dominions except in the Australian States and in New Zealand. The cases where reservation will be permitted have been defined in the Declaration of 1943 and are proved for by Article 38. The language is that of the existing Royal instructions, except as to paragraph (*a*), which is a new provision required by the Declaration.

22. Article 39 is required by the Declaration of 1945 but it has been very closely defined, and must be read with Article 40, which makes certain that important matters of internal civil administration are not brought within Article 39. It is made clear in Article 39 that the existence of the Governor-General's power to legislate will not prevent the Parliament of Ceylon from legislating, but if an ordinary Bill is repugnant to a Governor-General's Ordinance it may be reserved for the royal assent. Article 41 deals with the validity of reservation or of a Governor-General's Ordinance.

The Executive Government.

23. Part V of the draft provides for " responsible government in all matters of internal civil administration " as required by the Declaration of 1943. As in the Dominions, the executive power is vested in the King by Article 42, but will be exercised in legal theory by the Governor-General and in practice by the Cabinet and responsible Ministers. Articles 43 to 50 are in substance common form in the Dominions, providing for Ministers and Deputy Ministers on the usual assumptions of responsible government. The provision of Article 44 that Defence and External Affairs are ministerial functions needs to be specially mentioned. Though in accordance with Articles 39 to 41, these subjects will be the special concern of the Governor-General, the Ministers have insisted that ALL functions of government shall be within the purview of the Cabinet and the Parliament of Ceylon. Articles 46 to 50 are common form.

24. Though it is neither British nor Dominion practice formally to establish the Cabinet by law, it has been thought desirable to do so in Ceylon and to make all Ministers (but not Deputy Ministers) members of it. In view of the fact that the Secretary of the Board of Ministers has also been Clerk to the State Council and that this is contrary to parliamentary practice, Article 52 makes special provision for a Cabinet Office.

25. Article 53 is partly transitional. Since both the Officers of State and the Executive Committees will disappear in accordance with the provisions for " responsible government " in the Declaration of 1943, their functions must be transferred to Ministers. The Departments of Government are however not at present organised for ministerial control, and an Executive Committee may have the general direction and control of as many as seven separate Departments. In the ministerial system the Minister has only one Department which is politically in his control and administratively in the control of his Permanent Secretary. Administrative as well as political co-ordination are thus achieved, and a clear distinction is drawn between politics and administration. Article 53 (2) brings this into operation as a transitional measure, and Article 53 (3) provides for a permanent arrangement. Article 54 is merely consequential.

Financial Provisions.

26. Article 55 brings the financial clauses into operation at the end of the financial year so as to avoid a disturbance in financial business. The major change in financial organisation is the establishment of a Consolidated Fund under Article 58. The advantages are not merely a matter of accounting. For instance, it enables a clear distinction to be drawn between expenditure of such constitutional importance that it ought to be permanently " charged on the Consolidated Fund " and the normal expenditure of the year, all of which should be voted by Parliament even if it is payable out of Loan Funds. The present financial procedure of the Island is in some measure a relic of colonial days. In Great Britain and the Dominions all expenditure which is not charged on the Consolidated Fund is voted by the Annual Appropriation Act or by a supplementary Appropriation Act (or Consolidated Fund Act). The State Council, on the other hand, votes from Loan Funds and approves supplementary estimates by simple resolution. Article 58 brings the British and Dominion practice into operation. The remainder of Part V is common form.

The Public Service.

27. In view of the importance of securing impartiality in appointments to the public service, the Ministers decided to establish an independent Public Services Commission of three persons, as provided by Article 62. In accordance with Article 64, every new appointment to a post carrying a salary of Rs.3,600 or more will be made on the recommendation of the Commission, which may also accept responsibility for any other appointment or class of appointment. All appointments not made by the Commission will be reported to the Commission and may be revoked on the recommendation of the Commission.

The Judicial Authorities.

28. Similarly, a Judicial Commission is provided by Article 68. It will be responsible for all judicial appointments except those of the Chief Justice and the Puisne Judges of the Supreme Court, who will be appointed by the Governor-General in his discretion. Articles 69 and 71 give the judges of the Supreme Court the usual independent position.

Conclusion.

29. The constitutional scheme provided by the Ministers was thus simple in its composition and would have been flexible in its operation. Though drafted in precise language in order that the discussions at the "commission or conference" contemplated by the Declaration of 1943, might have been held on a text and not on general resolutions, it had not been checked by a legal draftsman, and the Ministers informed His Excellency the Governor that any legal pruning that might be necessary could be undertaken after His Majesty's Government had been satisfied that it conformed with the requirements of the Declaration of 1943. Subject to the requirements of the Declaration and of the special conditions of the Island, the draft provides a simple Constitution of the recognised Dominion type. The Ministers have withdrawn it not because they would have had any hesitation in recommending it to the State Council, but because, in their opinion, His Majesty's Government has failed to carry out the undertaking given in the Declaration of 1943. The Ministers have now authorised publication in order to show that they have fully and conscientiously carried out the mandate conferred on them by the Declaration.

(II.)

*THE CONSTITUTIONAL SCHEME FORMULATED BY THE MINISTERS IN ACCORDANCE WITH HIS MAJESTY'S GOVERNMENT'S DECLARATION OF 26TH MAY, 1943.

THE CONSTITUTION OF CEYLON.

PART I.—*Preliminary.*

1. This Order may be cited as "The Ceylon (Constitution) Order-in-Council, 1944". It shall be published in the *Gazette*, and the date of such publication shall be "the date of operation".

2. Nothing in this Order shall apply to the Maldive Islands.

3. Subject to Article 55 of this Order, as from the appointed day the Ceylon (State Council) Order in Council, 1931, shall be revoked, but without prejudice to the validity of any act done before the appointed day, and without prejudice to the continuance of any legal proceeding that may have been begun before the appointed day.

4. (1) In this Order, unless the context otherwise requires—

"Adjourn" means suspend the sitting;

"Appointed day" means the day appointed by Proclamation for the purpose of Article 3;

"Dissolution" means the act of bringing the life of a Parliament to an end; and "dissolve" has a corresponding meaning;

"Elector" means an elector within the meaning of the Ceylon (Elections) Order-in-Council, 1944;

"Judicial Office" means any paid judicial office;

"Proclamation" means a Proclamation issued by the Governor-General and published in the *Gazette*;

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* This is the Scheme referred to in the Ministers' letter of 2nd February, 1944, to His Excellency the Governor. The Scheme was withdrawn by the Ministers—*vide* para. 5 of Document "D" in Part I of Sessional Paper No. XII of 1944.

" Prorogue " means bring the session to an end;

" Public Office " means any office the holder of which is a public officer.

" Public Officer " means any person who holds a paid office, other than a judicial office, under the Crown in respect of the Government of Ceylon;

Provided that—

(*a*) A member of the Council of State shall not be deemed to be a public officer merely because he receives an allowance as such member; and

(*b*) " Public Officer " shall not include the Governor-General or any member of his staff paid out of his Civil List, the Speaker or other officer of the Council of State, the Clerk of Parliament or any member of his staff appointed under Article 32, any Minister, the Auditor-General, any member of the Ceylon Defence Force or Deputy Minister or of the Ceylon Royal Naval Volunteer Reserve who is not in full-time employment in that Force or Reserve, any Crown Advocate other than a Crown Counsel, or any Crown Proctor.

" Session " means the period between the summoning of a Parliament, whether on the first or a subsequent occasion, and the termination of the proceedings consequent upon that summons;

" Sitting " means the period during which the Council of State is sitting continuously without adjournment, and includes any period during which the Council of State is in Committee;

" United Kingdom " means the United Kingdom of Great Britain and Northern Ireland.

(2) Any reference in this Order to an Order-in-Council shall be construed as a reference to that Order-in-Council as amended by any subsequent Order-in-Council made before the appointed day.

(3) Any reference to the holder of a particular judicial or public office shall be deemed to include a reference to a person who is temporarily acting in that office.

(4) In the interpretation of this Order the provisions of the Interpretation Ordinance shall, subject to the express provisions of this Order, and notwithstanding any provision to the contrary in such Ordinance, apply as if this Order were an Ordinance of the State Council of Ceylon.

Part II.—*The Parliament of Ceylon.*

5.—(1) There shall be a Parliament of Ceylon which shall consist of the King and the Council of State; but if Parliament provides by law for the establishment of a Senate, Parliament shall consist, so long as such law is in operation, of the King, the Senate and the Council of State.

(2) In this Order, unless the context otherwise requires, " Parliament " means the Parliament of Ceylon and " the Council " means the Council of State.

6.—(1) Parliament may make laws for the establishment of a Senate, its composition, powers, procedure or privileges, or the emoluments of its members.

(2) Notwithstanding anything in Article 10, any Act of Parliament under this Article may amend this Order in so far as such amendment may be necessary to give effect to this Article or to enable Ministers or Deputy Ministers to sit or vote in the Senate.

7. Parliament may make laws for the peace, order and good government of Ceylon.

8. In the exercise of its power under Article 7 Parliament shall not make any law—

(*a*) to prohibit or restrict the free exercise of any religion; or

(*b*) to make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or

(*c*) to confer on persons of any community or religion any privileges or advantages which are not conferred on persons of other communities or religions; or

(*d*) to alter the constitution of any religious body except with the approval of the governing authority of that religious body.

9. An Act of Parliament shall be expressed to be enacted by the King and the Council of State of Ceylon.

10.—(1) Parliament may repeal or amend any provision of any Order-in-Council in force in the Island immediately before the date of operation other than an Order made under the provisions of any Act of the Parliament of the United Kingdom.

(2) Parliament may repeal or amend this Order:

Provided that except where this Order otherwise provides, or where a provision is made " until Parliament otherwise provides "—

(*a*) This Order shall not be deemed to be amended except by express words to that effect; and

(*b*) No Bill for the amendment of this Order shall be presented for the Royal Assent unless it has been assented to in the Council by not less than two-thirds of the whole number of the members thereof, excluding the Speaker or other presiding officer.

11. Parliament may make laws having extra-territorial operation, but unless the contrary intention appears an Act of Parliament shall be deemed to extend only to the Island and its territorial waters.

PART III.—*The Council of State.*

12. As soon as may be after the date of operation the Governor-General shall appoint a Delimitation Commission consisting of the Chief Justice or a Judge of the Supreme Court, who shall be Chairman, and two other persons who shall not be members of the State Council.

13.—(1) The Delimitation Commission appointed under Article 12 shall divide each Province of the Island into a number of electoral districts ascertained as provided in clause (2) of this Article.

(2) The total number of persons who according to the census of 1931 were resident in the Province shall be ascertained to the nearest 75,000. In respect of each 75,000 of this number the Delimitation Commission shall allot one electoral district to the Province and shall add a further number of electoral districts (based on the number of square miles in the Province at the rate of one additional electoral district for each 1,000 square miles of area calculated to the nearest 1,000) as follows:—

Western Province	1
Central Province	2
Southern Province	2
Northern Province	4
Eastern Province	4
North-Western Province	3
North-Central Province	4
Province of Uva	3
Province of Sabaragamuwa	2

(3) In dividing a Province into electoral districts the Delimitation Commission shall provide that each electoral district in the Province shall have as nearly as may be an equal number of persons, but shall also take into account the transport facilities of the Province, its physical features, and the community or diversity of interest of its inhabitants.

(4) The decisions of the Delimitation Commission shall be embodied in Regulations to be issued by the Governor-General and to take effect as if incorporated in this Order.

14.—(1) Within one year after the completion of every census the Governor-General shall appoint a Delimitation Commission consisting of the Chief Justice or a Judge of the Supreme Court, who shall be Chairman, and two other persons who shall not be members of the Council.

(2) In making appointments under this Article the Governor-General shall act in his discretion.

15. Article 13 of this Order shall apply to a Delimitation Commission appointed under Article 14, subject to the modification that for the purposes of clause (2) thereof the total number of persons shall be ascertained not according to the census of 1931 but according to the last preceding census for the time being.

16.—(1) Subject to Article 17, the Council shall consist of members elected by electors of the several electoral districts constituted in accordance with this Order.

(2) There shall be one member for each electoral district who shall be elected in accordance with the provisions of this Order and of the Ceylon (Elections) Order-in-Council, 1944.

17.—(1) Where after any general election it appears to the Governor-General that any important interest in the Island is inadequately represented he may appoint to the Council such number of members, not exceeding six, as he may think fit.

(2) When the seat of any member appointed under this Article falls vacant, the Governor-General may appoint a person to fill the casual vacancy.

(3) In the exercise of his functions under this Article the Governor-General shall act in his discretion.

18. Any person who is qualified to be an elector shall, unless he is disqualified under Article 19, be qualified to be elected or appointed to the Council.

19. No person shall be capable of being elected or appointed a member of the Council or of sitting or voting in the Council who—

(*a*) is a public officer or a judicial officer or Auditor-General:

(*b*) directly or indirectly, by himself or by any person on his behalf or for his use or benefit, holds or enjoys any right or benefit under a contract made by or on behalf of the Crown in respect of the Government of Ceylon for the furnishing or providing of money to be remitted abroad or of goods or services to be used or employed in the service of the Crown in the Island, or receives or is a member of any incorporated or unincorporated body of less than 25 persons which receives, any grant from the public funds of the Island of such a nature that the award or amount of the grant is within the discretion of the Crown or of a public officer: Provided that this disqualification shall not be applied in respect of—

(i) any contract for subscription to a loan issued to the public on advertised terms; or

(ii) any pension, gratuity or other benefit payable under the general law; or

(iii) any grant to a municipal council, urban council, or other public authority established by written law; or

(iv) any grant to a body whose purposes are mainly religious, charitable or educational;

(*c*) is an uncertificated or undischarged bankrupt; or

(*d*) has been convicted by any Court in Ceylon of any offence made punishable by the Penal Code (other than an offence under Chapter VI thereof or the offence of abetting or conspiring to commit any such offence) and has been sentenced to a term of imprisonment of three months or longer in respect of that offence: Provided that, if seven years or more have elapsed since the termination of the imprisonment or the grant of a free pardon the person convicted shall not be incapable by reason only of such conviction of being elected or appointed a member of the Council or of sitting or voting in the Council;

(*e*) is restrained of his liberty of movement or deprived of the management of his property by reason of mental disease; or

(*f*) is incapable of being registered as an elector or of being elected as a member by reason of his conviction of a corrupt or illegal practice or by reason of the report of an election judge in accordance with the law for the time being in force relating to the election of members of the Council; or

(*g*) would by reason of his conviction for a corrupt or illegal practice have been incapable of being elected as a member of the Legislative Council or of the State Council if the laws relating to election to those bodies had remained in operation; or

(*h*) would by reason of the adjudication by a competent Court or by a Commission appointed with the approval of the State Council or of the Council of State or by a Select Committee of the State Council or of the Council of State to have accepted a bribe or gratification offered with a view to influencing his judgment as a member of the State Council or of the Council of State be incapable of being elected a member of the State Council (if the law relating to elections to that body remained in operation) or of the Council of State.

20. Except for the purpose of electing the Speaker of the Council, no member of the Council shall sit or vote therein until he shall have taken and subscribed before the Council the oath of allegiance in the form given in the Schedule, or shall have made and subscribed before the Council an affirmation in the corresponding form.

21.—(1) A person shall be liable to a penalty of five hundred rupees for every day on which he shall sit or vote in the Council knowing or having reasonable grounds for knowing that he is disqualified by this Order from so sitting or voting or that his seat has become vacant.

(2) The penalty imposed by this Article shall be recoverable by action in the District Court of Colombo instituted by any person who shall sue for it:

Provided that—

(*a*) no such action may be instituted unless the leave of the District Judge of the Court shall first have been obtained;

(*b*) if no steps in pursuit of the action have been taken by the person instituting the action for any period of three months after the action has been instituted, the action shall be dismissed with costs.

22. The seat of a member of the Council shall become vacant—

(*a*) upon his death; or

(*b*) if by writing under his hand addressed to the Speaker he shall resign his seat; or

(*c*) if he shall become incapable of sitting or voting as a member by reason of any provision of this Order; or

(*d*) if he shall become the citizen or subject of any foreign State or Power or shall make any declaration or acknowledgment of allegiance to any foreign State or Power; or

(*e*) if his election shall be vacated or made void by reason of the commission of any corrupt or illegal practice or by reason of the declaration, certificate or report of an election judge; or

(*f*) if without the leave of the Council first obtained, he shall be absent from the sittings of the Council for a continuous period of three months; or

(*g*) upon the dissolution of Parliament.

23. Members of the Council may be paid such allowances as may be authorised by law, and the receipt of any such allowances shall not disqualify a member from sitting or voting in the Council.

24.—(1) As soon as may be after the making of Regulations under clause (4) of Article 13, the Governor-General shall by Proclamation dissolve the State Council and summon a Parliament in accordance with this Order.

(2) After the dissolution of the State Council under this Article, and until the appointed day; Article 71 of the Ceylon (State Council) Order-in-Council, 1931, shall apply as if the dissolution were a dissolution under that Article and the appointed day were the next succeeding election of Executive Committees and appointment of Ministers.

25.—(1) A Parliament shall remain in session until it is prorogued or dissolved by the Governor-General by Proclamation, and there shall be at least one session in every year.

(2) A Proclamation proroguing Parliament shall fix a date for the next session, not being more than four months after the date of the Proclamation.

Provided that at any time while Parliament stands prorogued the Governor-General may by Proclamation fix an earlier date for the next session or dissolve Parliament.

26.—(1) A Proclamation dissolving Parliament shall summon a new Parliament to meet at a date not later than four months from the date of the Proclamation, and shall fix a date or dates for the election of members of the Council:

Provided that, if in the opinion of the Governor-General there arises after the dissolution of a Parliament an emergency of such a nature that an earlier meeting of Parliament is necessary, the Governor-General may by Proclamation summon the Parliament which has been dissolved and such Parliament may be kept in session until the meeting of the new Parliament.

(2) If a Parliament is not sooner dissolved by Proclamation, it shall be deemed to be dissolved at the expiry of five years from the date of the last dissolution of Parliament, and the Governor-General shall forthwith issue a Proclamation summoning a new Parliament.

27. The Council may adjourn from time to time, as it may determine by resolution or Standing Order, until Parliament is prorogued or dissolved:

Provided that during any adjournment for a period exceeding one month, the Speaker may convene a meeting of the Council for the transaction of any urgent business of public importance, in such circumstances as may be prescribed by Standing Orders.

28. The Council may transact business notwithstanding that there is any vacancy among the members or that any member is absent, but if the attention of the Speaker or presiding officer be drawn to the fact that there are fewer than twenty members present he shall, subject to any Standing Order of the Council, adjourn the sitting without question put.

29.—(1) Subject to the provisions of this Order, the Council may by resolution or Standing Order provide for the regulation of its business, the preservation of order at its sittings, the terms on which any remuneration or allowance authorised by law may be paid to members, and any other matter for which provision is made by this Order.

(2) Until the Council otherwise provides, the practice and procedure of the Council shall be the same as the practice and procedure of the State Council, sitting in legislative session, in accordance with the Standing Orders in operation at the date of operation.

(3) So long as Government business is under discussion, no motion for the suspension of Standing Orders may be moved except with the consent of the Prime Minister or other representative of the Cabinet.

30.—(1) The privileges, immunities and powers of the Council and of its members may be determined and regulated by Act of Parliament but no such privileges, immunities or powers shall exceed those for the time being held or enjoyed by the Commons House of the Parliament of the United Kingdom or of its members.

(2) Until Parliament otherwise provides, the privileges of the Council shall be the same as those of the State Council at the date of operation.

31.—(1) The first business of the Council after a general election shall be the election of members to be respectively Speaker, Deputy Speaker and Chairman of Committees (hereinafter called the Deputy Speaker), and Deputy Chairman of Committees. Each member so elected shall hold office until the next dissolution of Parliament unless in the meantime he resigns his office or ceases to be member of the Council. Whenever a vacancy occurs in the office of Speaker, Deputy Speaker or Deputy Chairman of Committees, the first business at the first sitting of the Council after the occurrence of the vacancy shall be the election of a member to fill the vacancy.

(2) The Speaker or in his absence the Deputy Speaker or in the absence of both of them the Deputy Chairman of Committees, shall preside at sittings of the Council. If none of them is present the Council shall elect a member to preside.

(3) There may be paid to the Speaker, the Deputy Speaker and the Deputy Chairman of Committees such emoluments as Parliament may decide, and the receipt of such emoluments shall not disqualify them from sitting or voting in the Council.

32.—(1) The Clerk of Parliament shall be appointed by the Governor-General on the recommendation of the Speaker for the time being, and the members of his staff shall be appointed by the Speaker for the time being.

(2) The Clerk of Parliament and the members of his staff shall be incapable of being elected or appointed to or of sitting or voting in the Council.

(3) The Clerk of the State Council shall be the first Clerk of Parliament, and the members of the staff of the State Council shall be transferred to the service of Parliament.

(4) The first Clerk of Parliament and the members of his staff transferred under clause (3) shall until Parliament otherwise provides, hold their appointments on as nearly as may be the same terms as those on which they were employed under the State Council.

PART IV.—*The Governor-General.*

33. A Governor-General appointed by the King shall be His Majesty's representative in the Island, and shall have and may exercise in the Island during the King's pleasure, but subject to this Order, such powers and functions of the King as His Majesty may be pleased to assign to him:

Provided, however, that until His Majesty shall appoint a Governor-General the functions of the Governor-General under this Order shall be exercised by the Governor.

34. The provisions of this Order relating to the Governor-General shall extend and apply to the Governor-General for the time being or such person as His Majesty may appoint to administer the government of the Island. His Majesty may authorise the Governor-General to appoint any person to be his deputy within the Island for any period during which the Governor-General may be unable to exercise any of the functions of his office, and in that capacity to exercise for and on behalf of the Governor-General all such powers and authorities vested in the Governor-General as the Governor-General may assign to him.

35. There shall be charged upon the Consolidated Fund, as salary for the Governor-General an annual sum of £8,000 sterling.

36.—(1) Except as provided in this Order the Governor-General shall after the appointed day exercise every function under this order in accordance with the constitutional conventions applicable to the exercise of a similar function in the United Kingdom by His Majesty.

(2) Where by or under this Order the Governor-General is directed to exercise a function on the recommendation of a person, he shall not exercise that function except on such a recommendation, but may accept the recommendation or refer it back to that person for further consideration.

(3) Where by or under this Order the Governor-General is directed to act in his discretion he shall refer the matter to the Prime Minister for advice but shall not be bound to accept such advice and may decide the matter in his discretion.

37. The Governor-General may assent in the King's name, or refuse such assent to Bills passed in accordance with this Order by the Council and no Bill shall become law until it has received the Royal Assent.

38.—(1) Where the Governor-General is so instructed by His Majesty he may reserve for His Majesty's assent—

(*a*) Any Bill dealing with Defence or External Affairs as defined by Article 39;

(*b*) Any Bill affecting the currency of the Island or relating to the issue of bank notes;

(*c*) Any Bill of any extraordinary nature and importance whereby the Royal Prerogative or the rights and property of British subjects not residing in the Island, or the trade and shipping of any part of His Majesty's Dominions, may be prejudiced;

(*d*) Any Bill, any of the provisions of which have evoked serious opposition by any racial, or religious community and which in the opinion of the Governor-General is likely to involve oppression or serious injustice to any such community.

(2) In the exercise of his functions under this Article the Governor-General shall act in his discretion but subject to any directions or instructions that he may receive from the Secretary of State on behalf of His Majesty.

39.—(1) Notwithstanding anything in this Order, the Governor-General shall have power to make laws to be called "Governor-General's Ordinances" dealing with any of the following matters:—

(*a*) External Affairs, that is to say, any matters, other than a matter affecting internal administration, contained in any treaty between His Majesty and a Foreign State or Power or in any agreement (other than an agreement relating only to trade or commerce made between the Government of Ceylon and the Government of any other part of His Majesty's dominions with the consent of the Secretary of State) between the Governor of Ceylon and the Government of any other part of His Majesty's dominions or of any Foreign State or Power;

(*b*) Defence, that is to say, the provision, construction, maintenance, security, staffing, manning and use of such defences, equipment, establishments and communications for such Forces other than the Ceylon Defence Force and the Ceylon Royal Naval Volunteer Reserve, as His Majesty may from time to time deem necessary to be stationed in Ceylon for the naval, military and air security of His Majesty's dominions.

(2) A Governor-General's Ordinance shall not impose any charge upon the revenue of the Island or upon any person resident in the Island or authorise the appointment or dismissal of any person to or from the service of the Government of Ceylon.

(3) A Governor-General's Ordinance may authorise the Governor-General to issue any instruction or direction to a Minister but shall not authorise him to issue any instruction or direction to any public officer.

(4) Before he makes a Governor-General's Ordinance, the Governor-General shall communicate his intention to the Speaker of the Council by message and shall not make the Ordinance unless the Council has decided not to pass a Bill dealing with the matter, or unless the Council has passed a Bill which in his opinion does not deal adequately with the matter, or unless one month has elapsed since the date on which the message was received by the Speaker of the Council.

(5) Parliament may make any law notwithstanding that it is repugnant to the terms of a Governor-General's Ordinance; but any Bill for this purpose may be reserved for the assent of His Majesty.

(6) In the exercise of his functions under this Article the Governor-General shall act in his discretion, but subject to any direction or instruction that he may receive from the Secretary of State on behalf of His Majesty.

(7) The powers conferred upon the Governor-General by this Article shall be strictly interpreted so as not to trench upon the powers conferred upon Parliament by this Order to any greater degree than is necessary for the control of External Affairs and Defence as defined in this Article.

40. The provisions of Articles 38 and 39 of this Order shall not extend to any Bill which deals only with one or more of the following matters, that is to say—

(*a*) the prohibition or restriction of immigration into the Island; or

(*b*) the declaration or definition of the rights and privileges of citizenship; or

(*c*) the prohibition or restriction of the importation of or the imposition of import duties upon any class of goods; or

(*d*) the establishment of shipping services, or the establishment or regulation of coastal shipping.

41.—(1) If any question arises whether a Bill may be reserved or has been properly reserved for His Majesty's assent in accordance with Article 38 the Attorney-General may refer such question to the Supreme Court, by whom it shall be considered in full bench and whose decision thereon shall be final.

(2) Where a Bill has been reserved for His Majesty's assent under Article 38 and has received such assent, the validity of the Act so enacted shall not be called in question in any Court on the ground only that the Bill ought not to have been so reserved.

(3) If any question arises, within one year from the enactment thereof, whether a Governor-General's Ordinance has been validly enacted, the Attorney-General may refer such question to the Supreme Court by whom it shall be considered in full bench and whose decision thereon shall be final.

(4) Where the Supreme Court decides under this Article that a Governor-General's Ordinance is invalid it shall be deemed to be null and void, but without prejudice to the validity of any act done thereunder before the date on which the question was submitted to the Supreme Court.

(5) Except as provided in this Article, the validity of a Governor-General's Ordinance shall not be questioned in any Court.

(6) An Act of the Governor-General shall not be called in question in any Court on the ground only that he did or did not exercise it in accordance with clause (1) of Article 36, or on the recommendation of any person, or in his discretion, nor on the ground only that he obeyed or disobeyed any direction or instruction from the Secretary of State.

PART V.—*The Executive Government.*

42. The executive power of Ceylon is vested in His Majesty and is exercisable by the Governor-General acting in accordance with this Order.

43. Until Parliament otherwise provides, there shall be ten Ministers of whom one shall be Prime Minister, appointed by the Governor-General and responsible to the Council. The Ministers other than the Prime Minister shall be appointed on the recommendation of the Prime Minister.

44. The functions to be assigned to each Minister, including those of External Affairs and Defence as defined in Article 39, shall be determined from time to time by the Prime Minister and published in the *Gazette*.

45.—(1) The Governor-General on the recommendation of the Prime Minister may appoint Deputy Ministers to assist the Ministers in the exercise of their departmental and parliamentary duties.

(2) The number of Deputy Ministers shall not at any time exceed the number of Ministers appointed under Article 43.

46. A Minister or a Deputy Minister shall hold office during pleasure but may resign by notice to the Governor-General in writing under his hand.

47. Whenever a Minister or a Deputy Minister is from any cause whatever unable to perform any of the functions of his office, the Governor-General may appoint a person whether or not he has already been appointed a Minister or a Deputy Minister, to act in the said Minister's stead, either generally or in the performance of any particular function. For the purpose of this Order the person so appointed shall be deemed to be a Minister or a Deputy Minister, as the case may be.

48. A Minister or Deputy Minister may not hold office for a longer period than three months unless he is or becomes a member of the Council.

49. Ministers and Deputy Ministers shall be paid such salaries as may be determined by Parliament. The acceptance of such salary shall not disqualify any Minister or Deputy Minister from being a member of or sitting or voting in the Council.

50. A person appointed to be a Minister or a Deputy Minister shall, before entering on the duties of his office, take and subscribe before the Governor-General an oath in the following form, or shall make and subscribe before the Governor-General an affirmation in the corresponding form:—

Form of Oath.

I, ————, do swear that I will well and truly serve His Majesty ———— in the office of Prime Minister/Minister (Deputy Minister) of ————.

51. The Ministers appointed under Article 43 shall constitute the Cabinet, and the Cabinet shall be charged with the general direction and control of the Government of Ceylon and shall be collectively responsible to the Council.

52. There shall be a Cabinet Office in charge of the Secretary to the Cabinet, who shall be appointed by the Governor-General on the recommendation of the Prime Minister. The Secretary to the Cabinet shall be responsible in accordance with instructions from the Prime Minister for summoning meetings of the Cabinet, arranging the business for such meetings, keeping the minutes and conveying the decisions of the Cabinet to the appropriate persons or authorities.

53.—(1) On the appointed day the general direction and control of any Department of Government which was, immediately before the appointed day, under the general direction and control of an Officer of State or of an Executive Committee shall be exercised by a Minister designated by the Prime Minister.

(2) As soon as may be after the appointed day, the Governor-General on the recommendation of the Prime Minister shall designate an officer to act temporarily as Permanent Secretary to each of the Ministers. The Permanent Secretary shall, subject to the general direction and control of his Minister, exercise supervision over the Departments of Government in the charge of his Minister.

(3) As soon as may be after the appointed day, the Governor-General shall by Regulation reorganise the Departments of Government in such manner that in respect of each Ministry there shall be a Permanent Secretary.

(4) For the purpose of this Article, the Department of the Auditor-General, the Office of the Clerk of Parliament and the Cabinet Office, shall be deemed not to be Departments of Government.

54.—(1) Any reference in any law to the Chief Secretary, the Legal Secretary or the Financial Secretary shall after the appointed day be construed as a reference to the Minister to whom the function has been assigned under Article 44: Provided that the Governor-General on the recommendation of the Prime Minister may direct that any function which is by such law to be exercised by the Chief Secretary, the Legal Secretary or the Financial Secretary shall be exercised by a Permanent Secretary or other public officer.

(2) Any reference in any law to an Executive Committee shall after the appointed day be construed as a reference to the appropriate Minister.

(3) Any reference in any law to a Minister appointed under the Ceylon (State Council) Order in Council, 1931, shall be construed as a reference to the appropriate Minister under this Order.

PART VI.—*Financial Provisions.*

55.—(1) Notwithstanding the revocation on the appointed day of the Ceylon (State Council) Order in Council, 1931, Articles 56 to 67 and Articles 70 and 71 of the Order shall remain in force until the 30th September next after the appointed day but subject to the following amendments:—

(*a*) The functions of the State Council shall be exercised by the Council of State.

(*b*) The functions of the Governor shall be exercised by the Governor-General in accordance with Article 36 of this Order.

(*c*) The functions of the Board of Ministers shall be exercised by the Cabinet.

(*d*) The functions of the Financial Secretary shall be exercised by the Minister of Finance.

(*e*) Any function of an Officer of State or of an Executive Committee shall be exercised by the Minister to whom the function has been assigned under Article 44.

(2) This Part of this Order shall come into operation on the 1st October next after the appointed day, but without prejudice to the power of the Governor-General, the Public Services Commission or a Minister to take such action as may be necessary to bring this Part of this Order into operation.

(3) Any Appropriation Ordinance passed by the State Council for the financial year next after the appointed day shall be deemed to be an Appropriation Act within the meaning of this Part of this Order.

56.—(1) There shall be an Auditor-General who shall be appointed by the Governor-General and shall hold office during good behaviour.

(2) The salary of the Auditor-General shall be fixed by law, shall not be altered during his term of office, and shall be charged on the Consolidated Fund.

(3) The office of Auditor-General shall become vacant—

(*a*) by his death; or

(*b*) by his attaining the age of fifty-five years or such higher age as the Governor-General on the recommendation of the Public Services Commission may determine; or

(*c*) by his resignation in writing addressed to the Governor-General; or

(*d*) by his removal by the Governor-General on account of ill-health or physical or mental infirmity in the like circumstances and subject to the same conditions as a public officer in receipt of similar pensionable emoluments; or

(*e*) by his removal by the Governor-General upon an address praying for his removal presented by the Council.

57. The funds of the Island not allocated by law to specific purposes shall form a single Consolidated Fund into which shall be paid the produce of all taxes, imposts, rates and duties and all other revenues of the Island: Provided that where under any existing or future law a fund is created for specific purposes the income from that fund may be credited to that fund.

58.—(1) The interest on the public debt and the costs, charges and expenses incidental to the collection, management and receipt of the Consolidated Fund shall be charged on the Consolidated Fund.

(2) No sum shall be withdrawn from the Consolidated Fund or any other Fund except by warrant from the Governor-General addressed to the Minister of Finance and countersigned by the Auditor-General.

(3) No warrant shall be countersigned by the Auditor-General unless he has satisfied himself, in the case of a sum to be withdrawn from the Consolidated Fund, that the sum has been charged upon the Consolidated Fund or has been appropriated by the Appropriation Act or a Supplementary Appropriation Act for the financial year during which the withdrawal is to take place, or, in the case of a sum to be withdrawn from any other Fund, that the withdrawal is authorised in accordance with the law applying to that Fund.

59.—(1) No Bill, motion, resolution or vote for the disposal of, or for the imposition of charges upon, any part of the public revenue or other funds of the Island, or for the authorisation of any prior disposal of any part of such revenue or funds, or for the imposition or augmentation of any tax or for the repeal or reduction of any tax for the time being in force, shall be introduced in the Council except by a Minister nor unless such Bill, motion, resolution or vote shall have received the prior approval of the Cabinet.

(2) In this Article " tax " does not include any tax raised by any local authority or body for a local purpose.

60. Where the Governor-General dissolves Parliament before the Appropriation Bill for the financial year has received the royal assent he may authorise the issue from the Consolidated Fund and the expenditure of such sums as he may deem necessary for the public services until the expiry of three months after the meeting of the new Parliament.

61.—(1) The accounts of the office of the Clerk of Parliament, of the Public Services Commission and of every Department of Government shall be audited by the Auditor-General as soon as may be after the end of every financial year.

(2) The Auditor-General shall annually report to the Council on the exercise of his functions under this Order.

PART VII.—*The Public Services.*

62.—(1) There shall be a Public Services Commission consisting of three Commissioners (of whom one shall be designated Chairman) appointed by the Governor-General acting in his discretion.

(2) No person shall be or be appointed a Commissioner under this Article if he is a member of the Council, or is a candidate for election to the Council, or is a public officer, and not more than one of the Commissioners may be a person holding a pension under the Minutes on Pensions or under any law relating to the pensions of public officers.

(3) The term of office of a Commissioner shall be five years but any Commissioner may be re-appointed: Provided that, where a person is appointed to fill a casual vacancy in the Commission he shall hold office for the remainder of the period of five years, but may be re-appointed.

(4) A Commissioner may resign his office by notice in writing addressed to the Governor-General and may be removed by the Governor-General, acting in his discretion, for cause assigned.

(5) A Commissioner may be paid such remuneration as may be determined by Parliament, but such remuneration shall not be diminished during his term of office and shall be charged on the Consolidated Fund.

63. There shall be a Secretary to the Public Services Commission appointed by the Governor-General on the recommendation of the Commission, and such other staff to be appointed by the Commission, as may be authorised by Parliament.

64.—(1) Every new appointment to a public office not otherwise provided for in this Order and carrying an initial salary of not less than Rs. 3,600 a year shall be made by the Governor-General on the recommendation of the Public Services Commission.

(2) The Public Services Commission may direct that any new appointment to a public office to which clause (1) of this Article does not apply or any class of such appointments shall be made by the Governor-General on the recommendation of the Public Services Commission and the appointment or class of appointment shall thereafter be so made until the Public Services Commission otherwise directs.

(3) Any new appointment to a public office to which clause (1) or clause (2) of this Article does not apply shall be made by the Head of the Department in which the public office is held but shall be reported to the Public Services Commission and may be revoked by the Governor-General on the recommendation of the Commission.

65.—(1) Any person who conspires or attempts to influence, or who influences, any decision of the Public Services Commission or of any member thereof, by means of any gift, promise or other inducement, or by any threat, shall be guilty of an offence punishable with a fine not exceeding one thousand rupees or one year's rigorous imprisonment or both.

(2) For the purposes of Chapter IX. of the Penal Code a member of the Public Services Commission shall be deemed to be a public servant.

66.—(1) Subject to this Order any person holding office under the Crown in respect of the Government of Ceylon shall hold office at the pleasure of the Governor-General and the promotion, transfer, dismissal and disciplinary control of persons in the public services shall be vested in the Governor-General.

(2) Subject to this Order the Governor-General may delegate to any Minister or public officer, but subject to such conditions as he may prescribe, any power relating to the promotion, transfer, dismissal and disciplinary control of any class of persons in the public services.

67.—(1) The Governor-General may, before the appointed day, make special regulations for the grant of pension or gratuity to any person in the public services, or any class of such persons, who hold office on the appointed day and who resigns within one year after the appointed day.

(2) All pensions and gratuities which have been granted to persons who have retired from the public services before the appointed day, or to the dependants of persons who have died before the appointed day, shall be governed by the law and regulations under which they were granted.

(3) All pensions and gratuities granted or regulated under this Article shall be charged on the Consolidated Fund.

PART VIII.—*The Judicial Authorities.*

68.—(1) There shall be a Judicial Commission consisting of the Chief Justice as Chairman, the Attorney-General and one other person to be appointed by the Governor-General acting in his discretion, but subject to this Article.

(2) No person shall be appointed under clause (1) of this Article if he is a member of the Council or a candidate for election to the Council, or a public officer: Provided that for the purposes of this clause " public officer " shall not include the Solicitor-General.

(3) The term of office of the person appointed under clause (1) of this Article shall be five years, but he may be re-appointed, may resign by notice under his hand to the Governor-General, and may be dismissed by the Governor-General, acting in his discretion, for cause assigned.

69.—(1) The Chief Justice and the puisne Judges of the Supreme Court shall be appointed by the Governor-General acting in his discretion.

(2) The Chief Justice and the puisne Judges of the Supreme Court shall hold office during good behaviour and shall not be removed except by the Governor-General on an address from the Council: Provided that Parliament may provide by law an age of compulsory retirement.

(3) An appointment to a judicial office not otherwise provided for by this Article shall be made by the Governor-General on the recommendation of the Judicial Commission.

(4) For the purposes of this Article "appointment" includes an acting or a temporary appointment or a transfer from one judicial office to another and "appointed" has a corresponding meaning.

70. Any judicial officer may resign by notice in writing addressed to the Governor-General.

71. The salaries of the Chief Justice and the puisne Judges of the Supreme Court shall be determined by law and charged on the Consolidated Fund, and the salary of any such Chief Justice or Judge shall not be diminished during his term of office.

SCHEDULE.

Form of Oath. (Article 20).

I, ——— do swear that I will be faithful and bear true allegiance to His Majesty ——— His Heirs and Successors according to law.

APPENDIX II

PUBLIC SESSIONS OF THE COMMISSION AT THE TOWN HALL, COLOMBO

LIST OF WITNESSES

Witness No.	Session No.	Date	
		January	
	1	22	Chairman's Opening Speech.
1	,,	,,	Sir Tikiri Banda Panabokke.
2	,,	,,	The Ceylon Chamber of Commerce (Mr. N. O. C. Marsh, Major J. W. Oldfield, C.M.G., O.B.E., M.C., M.S.C., Mr. H. E. Newnham, C.M.G., V.D., Mr. K. J. Witham-Wignall).
3	2	23	Mr. G. A. H. Wille, M.S.C.
4	,,	,,	The Dutch Burgher Union of Ceylon (Mr. G. A. H. Wille, M.S.C., Dr. V. R. Schokman, Mr. J. R. Toussaint, Mr. H. J. de Kretser and others).
5	3	25	The Ceylon Muslim League (Mr. T. B. Jayah, M.S.C., and others).
6	,,	,,	Mr. W. Dahanayake, M.S.C., M.M.C.
7	,,	,,	Mr. Periannan Sundaram.
8	4	26	Mr. Clement J. Black, M.S.C.
9	,,	,,	The All-Ceylon Malay Congress (Dr. M. P. Drahaman and others) and The Malay Political Association of Ceylon (Mr. Z. D. Musafer and others).
10	5	29	Sir Gerard Wijeyekoon and others.
11	,,	,,	The National Youth Federation (Mr. A. B. Perera and others).
12	,,	,,	The All-Ceylon Malay League (Mr. T. K. Burah, Mr. M. H. Amit and others).
13	,,	,,	The Civil Service Association (Mr. W. E. Hobday, E.D., Mr. H. S. Amerasinghe, Mr. R. S. V. Poulier, Mr. F. Leach, O.B.E., M.C., and Mr. C. H. Hartwell).
14	,,	,,	The Ceylon Public Service Association (Lt.-Col. J. P. Appleby, C.M.G., Lt.-Col. C. H. Brazel, M.C., and Lt.-Col. W. G. Hills).
15	6	30	The Catholic Union of Ceylon (Dr. Lucian de Zilwa, Father P. Pillai, Chevalier Arulanantham and others).
16	,,	,,	The Association of Chartered Accountants of Ceylon (Mr. A. Duncum and Mr. F. B. Lander).
17	,,	,,	Mr. Donald Obeyesekere, M.B.E.
18	,,	,,	Mr. L. Bandara Attanayake.
19	,,	,,	The Galle Liberal League (Mr. C. J. Seneviratne and others).
20	,,	,,	Mr. M. Nagarathinam.
		February	
21	7	1	Mr. K. Dahanayake.
22	,,	,,	Mr. V. Nalliah, M.S.C.
23	,,	,,	The Liberal Socialist Group (Mr. O. B. de Silva Vijayamuni and others).
24	,,	,,	Mr. C. E. Mackenzie Pereira.
25	8	2	The Planters' Association of Ceylon and The Ceylon Estates Proprietary Association (Mr. G. K. Newton, Mr. R. C. Scott, Mr. H. J. Temple, Mr. D. F. Ewen, Mr. R. Mann and Squadron Leader R. Gaddum).
26	,,	,,	Mr. K. Shanmukham.
27	,,	,,	Mr. A. Gnana Prakasam.
28	,,	,,	Mr. G. K. W. Perera.
29	,,	,,	Mr. N. A. Liyanage.
30	9	5	The All-Ceylon Muslim Political Conference (Sir Mohamed Macan Markar, Mr. T. B. Jayah, M.S.C., and others).
31	,,	,,	Mrs. Clement J. Black.
32	,,	,,	Mr. J. L. M. Fernando.
33	,,	,,	The National Christian Council of Ceylon (The Rev. W. M. P. Jayatunga, The Rev. D. T. Niles and others).

LIST OF WITNESSES—*contd.*

Witness No.	Session No.	Date	
34	10	February 6	The European Association of Ceylon (Mr. H. J. D. Stokes, Mr. J. A. Clubb, Mr. F. C. Gibbs, Mr. J. W. Thompson and Col. S. A. Pakeman, O.B.E., M.C., E.D.).
35	,,	,,	The Burgher Political Association of Ceylon (Dr. Andreas Nell and others).
36	,,	,,	The All-Ceylon Scheduled Castes Federation (Mr. S. Somasunderam and others).
37	,,	,,	The Hindu Walibar Samajam (Mr. M. Perumal Bharathy and others).
38	11	8	The Kandyan National Assembly (Mr. M. B. Panabokke Mr. B. H. Aluwihare, M.S.C. and others).
39	,,	,,	The Kandyan National Assembly (Kurunegala Branch) (Mr. R. S. Tennekoon, Mr. R. B. Ballale and others).
40	,,	,,	The Ceylon Labour Party and the All-Ceylon Trade Union Congress (Mr. A. E. Goonesinha, M.M.C., and others).
41	,,	,,	The Lanka Kamkaru Mahajana Sabha (Mr. C. G. E. Bertram de Silva, Mr. C. J. Seneviratne, and Mr. J. Eamon Silva).
42	,,	,,	Moratuwa Maha Jana Sabha (Sir Wilfred de Soysa, Mr. J. G. Fernando, Mr. M. S. Perera, Mr. B. Don Thomas, and others).
43	12	9	Mr. K. P. Thillaiampalam.
44	,,	,,	Mr. C. A. Botejue.
45	,,	,,	The All-Ceylon Buddhist Women's Congress (Mrs. W. D. Fernando, Mrs. C. Hapugalle, Miss S. V. de Mel, Miss K. V. Fernando and others).
46	,,	,,	Mr. A. H. Tudor Fernando.
47	,,	,,	Diwan Bahadur I. X. Pereira, M.S.C., Mr. S. Vytilingam, M.S.C., and Mr. K. R. Natesa Iyer, M.S.C.
48	13	12	The All-Ceylon Estate Workers' Congress (Mr. C. G. E. Bertram de Silva).
49	,,	,,	The Ceylon Moors' Association (Mr. A. R. A. Razik, M.S.C., M.M.C., Mr. S. M. Ismail and others).
50	,,	,,	The All-Ceylon Fisheries Union (Mr. D. V. Algama. Mr. Dodwell Gunawardena and others).
51	,,	,,	The Central Fisheries Union of Ceylon (Dr. M. de Almeida, Mr. T. C. P. Fernando and others).
52	,,	,,	Mr. L. M. D. de Silva, K.C., Mr. C. L. Wickremasinghe, C.M.G., and Mr. G. Crossette-Thambyah.
53	14	13	The Batticaloa Association (Mr. K. Kanagasabai, Mr. M. Kanagasunderam, Muhandiram S. Armstrong and others).
54	,,	,,	The All-Ceylon Minority Tamil Maha Sabha (Mr. D. James, Mr. J. D. Aseervatham, Miss M. V. Hutchins and others).
55	,,	,,	The Lanka Swajathyodaya Sangamaya (Mr. N. H. Keerthiratne and others).
56	,,	,,	The Sri Lanka Swajathika Sangamaya (Mr. E. W. Mathew, Mr. D. L. F. Pedris and others).
57	,,	,,	The Ceylon Planters' Society Ltd. (Col. F. O. Sprinks, E.D., and Mr. H. S. Hurst).
58	15	15	The All-Ceylon Tamil Congress (Mr. G. G. Ponnambalam, M.S.C., and others).
,,	16	16	,, ,, ,, ,,
59	,,	,,	The Uva Kandyan Association (Mr. J. A. Rambukpota and others).
60	,,	,,	The Medarata Mahajana Sangamaya (Mr. H. R. U. Premachandra and others).
61	17	23	The Income Tax Payers' Association of Ceylon (Mr. R. L. Pereira, K.C., and others).
62	,,	,,	The General Clerical Service Union (Mr. D. W. Goonewardena, Mr. W. K. Wijemanne, Mr. A. B. A. Mediwaka and others).

LIST OF WITNESSES—*contd.*

Witness No.	Session No.	Date	
		February	
63	17	23	The Public Services League (Mr. J. D. Abeynayake, Mr. V. N. Wirekoon, Mr. W. K. Wijemanne, Mr. A. B. A. Mediwaka, Mr. A. T. Murthy, Mr. D. R. Settinayake and others).
64	,,	,,	Mr. A. Thiagarajah.
65	,,	,,	The Indian Mercantile Chamber of Ceylon (Diwan Bahadur I. X. Pereira, M.S.C., and others).
		March	
66	18	5	Mr. C. Suntharalingam.
67	,,	,,	The Ceylon Indian Congress (Mr. A. Aziz, Mr. S. Vytilingam, M.S.C., and others).
68	,,	,,	The Ceylon Thamils' Association (Mr. R. Ragupathy and Mr. T. Muttucumaru).
69	19	6	Mr. B. H. Dunuwille, M.M.C., Mr. P. H. A. de Silva and others.
70	,,	,,	Mr. Simon Abeywickrama, M.S.C.
71	,,	,,	The Swarajist Party (Mr. C. E. C. Bulathsinhala and others).
72	,,	,,	Sri Lankodaya Sabha (Mr. S. W. Jayasuriya, Mr. A. Wijesiri and others).
73	,,	,,	The Kandyan Youth League (Mr. A. Godamunne, Mr. H. W. Rambukwelle and others).
74	,,	,,	Mr. S. Natesan, M.S.C.
75	,,	,,	Mr. Sam P. C. Fernando.
76	20	13	The Jaffna Association (Mr. G. Crossette Thambyah and others).
77	,,	,,	Joint Indian Associations (Mr. Periannan Sundaram and others).
78	,,	,,	The Ceylon Malayali Mahajana Sabha (Mr. C. K. Kunhiraman and others).
79	,,	,,	The Lanka Mahajana Sabha (Mr. H. W. Amarasuriya M.S.C., Mr. F. A. Obeyesekere and others).
80	,,	,,	Mr. A. F. Molamure, M.S.C.
	,,	,,	Chairman's Closing Speech.
	,,	,,	Reply by Mr. A. F. Molamure, M.S.C.

Private discussions were also had with the following:—

Mr. K. Balasingham.
Mr. L. M. D. De Silva, K.C.
Dr. R. F. Dias, M.A., LL.D. (Ceylon Judicial Service Association) and others
The Hon. Sir Robert Drayton, C.M.G. (Chief Secretary).
The Hon. Sir Waitialingam Duraiswamy (Speaker of the State Council).
Sir Oliver Goonetilleke, K.B.E., C.M.G.
The Hon. Mr. H. J. Huxham, C.M.G. (Financial Secretary).
Sir Frederick James.
The Hon. Mr. J. H. B. Nihill, K.C. (Legal Secretary).
Mr. G. G. Ponnambalam, M.S.C.
The Hon. Mr. D. S. Senanayake (Leader of the State Council).
Sir Thomas Villiers.

APPENDIX III

ITINERARY

1944	
Dec. 18th	Left London.
Dec. 19th	Left Lyneham Airport in R.A.F. Transport Command aircraft.
Dec. 22nd	Arrived Ratmalana Airport, Colombo, via Malta, Cairo, Shaibah and Karachi.
Dec. 23rd to 27th ...	In Colombo.
Dec. 28th to 30th ...	At Nuwara Eliya with H.E. the Governor and Lady Moore.
1945	
Dec. 31st to Jan 5th ...	In Colombo.
Jan. 6th	Left Colombo by car for tour of Central, North-Central and North-Western Provinces. Arrived Peradeniya.
Jan. 7th	At Peradeniya. Visited Minipe.
Jan. 8th	To Sigiriya, via Kandy, Matale and Dambulla.
Jan. 9th	At Sigiriya and to Polonnaruwa.
Jan. 10th	Polonnaruwa and district.
Jan. 11th	To Anuradhapura via Giritale and Minneriya.
Jan. 12th and 13th ...	At Anuradhapura. Visited Kagama and Kalawewa.
Jan. 14th	To Colombo via Kurunegala.
Jan. 15th to 26th ...	In Colombo. (Jan. 22nd to 26th—Public Sessions.)
Jan. 27th and 28th ...	At Giriulla.
Jan. 29th and 30th ...	In Colombo. (Public Sessions.)
Jan. 31st	Visited Schools at Matugama, Nakandalagoda, and Alutgama.
Feb. 1st to 9th ...	In Colombo. (Public Sessions.)
Feb. 10th	Visited Schools at Pasyala, Danowita, Yakkawita, Nakkawatta and Kankaniyamulla.
Feb. 11th to 17th ...	In Colombo. (Feb. 12th to 16th—Public Sessions.)
Feb. 18th and 19th ...	At Diyatalawa.
Feb. 20th to 22nd. ...	At Agrapatana.
Feb. 23rd to 25th ...	In Colombo. (Feb. 23rd—Public Sessions.)
Feb. 26th	Left Colombo by car for tour of Western, Southern and Sabaragamuwa Provinces. Arrived Bentota.
Feb. 27th	To Weligama via Galle.
Feb. 28th	To Hambantota.
Mar. 1st	To Matara.
Mar. 2nd	To Ratnapura.
Mar. 3rd	At Ratnapura and to Colombo.
Mar. 4th and 5th ...	In Colombo. (Mar. 5th—Public Session.)
Mar. 6th	Public Session. Left Colombo by night train for tour of Northern Province.
Mar. 7th	In Jaffna. Tour of the Peninsula including Point Pedro, Kankesanturai, Manipay.
Mar. 8th	To Mannar via Kilinochchi, Mankulam, Mullaittivu, Kannukkerni, Vavuniya.
Mar. 9th	Mannar and district. Returned to Colombo by night train.
Mar. 10th to 12th ...	At Balangoda.
Mar. 13th to 27th ...	In Colombo. (Mar. 13th—Public Session.)
Mar. 28th	Left Colombo for tour of Eastern and Uva Provinces. Arrived Trincomalee.
Mar. 29th	To Batticaloa via Kalkudah.
Mar. 30th	Batticaloa and district.
Mar. 31st	To Badulla via Rugam, Mahaoya and Padiyatalawa.
Apr. 1st	To Colombo via Ella and Nuwara Eliya.
Apr. 2nd to 6th ...	In Colombo.
Apr. 7th	Left Ratmalana Airport, Colombo, in R.A.F. Transport Command aircraft.
Apr. 9th	Arrived Lyneham Airport via Karachi, Shaibah, Cairo and Malta.

APPENDIX IV

Population Statistics

(*Note :* The statistics in this and the following Appendices are arranged so far as possible on the principles followed by the Special Commission (Donoughmore) Report of 1928 (Cmd. 3131))

(1)—Estimated Population of Ceylon by Race and Religion

Race	Population		Buddhists		Hindus		Mohammedans (Muslims)		Christians		Others	
	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41
All races	5,306,871	6,061,336	3,267,455	3,731,979	1,158,523	1,323,225	356,888	407,625	523,066	597,427	939	1,080
Low-country Sinhalese	2,273,291	2,596,479	1,961,457	2,240,311	485	553	84	96	311,188	355,430	77	89
Kandyan Sinhalese ...	1,284,775	1,467,429	1,275,320	1,456,628	277	317	29	34	9,137	10,435	12	15
Ceylon Tamils ...	610,272	697,032	7,027	8,026	506,605	578,627	105	120	96,366	110,066	169	193
Indian Tamils ...	711,028	812,113	19,065	21,775	632,911	722,890	411	469	58,390	66,691	251	288
Ceylon Moors ...	297,204	339,456	38	44	17	19	297,132	339,374	17	19	—	—
Indian Moors ...	38,960	44,499	4	4	17	19	38,930	44,465	9	11	—	—
Europeans	9,577	10,938	21	24	—	—	—	—	9,480	10,827	76	87
Burghers and Eurasians.	34,728	39,666	367	419	19	22	5	5	34,297	39,172	40	48
Malays	15,810	18,058	20	23	2	3	15,778	18,021	7	8	3	3
Veddas	5,321	6,078	1,406	1,606	3,889	4,442	1	1	24	27	1	2
Others	25,905	29,588	2,730	3,119	14,301	16,333	4,413	5,040	4,151	4,741	310	355

1. The population of the Island on 26th February, 1931, for all races is that returned at the partial Census on that date. The corresponding population on 31st December, 1941, is based on natural increase (excess of births over deaths) and the excess or reverse of immigrants over emigrants.

2. The population for each race and religion is estimated on the assumption that the distribution remained the same as at the Census of 1921. The assumption may be considered fairly satisfactory for all the races except Indian Tamils and Indian Moors whose population is affected by migration.

(2)—Estimated Population by Race and Province

Race	Total Population, Ceylon		Western Province		Central Province		Southern Province		Northern Province	
	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41
All Races (Population Census 1931)	*Actual count* 5,306,871	*Estimated* 6,061,336	*Actual count* 1,445,034	*Estimated* 1,650,472	*Actual count* 953,388	*Estimated* 1,088,931	*Actual count* 771,204	*Estimated* 880,845	*Actual count* 398,874	*Estimated* 455,582
	Estimated		*Estimated*		*Estimated*		*Estimated*		*Estimated*	
Low-country Sinhalese ...	2,273,291	2,596,479	1,164,870	1,330,478	74,335	84,903	724,685	827,713	1,797	2,052
Kandyan Sinhalese	1,284,775	1,467,429	14,757	16,855	419,873	479,566	2,015	2,301	2,241	2,560
Ceylon Tamils	610,272	697,032	29,052	33,182	12,938	14,777	2,030	2,319	374,859	428,152
Indian Tamils	711,028	812,113	105,785	120,824	376,880	430,461	14,538	16,605	4,766	5,444
Ceylon Moors	297,204	339,456	60,134	68,683	44,667	51,017	23,661	27,025	13,414	15,321
Indian Moors	38,960	44,499	19,087	21,801	9,670	11,045	350	400	518	592
Europeans	9,577	10,938	4,015	4,586	3,708	4,235	338	386	131	150
Burghers and Eurasians ...	34,728	39,666	22,157	25,307	5,512	6,296	1,794	2,049	702	802
Malays	15,810	18,058	7,964	9,096	3,780	4,317	1,311	1,497	106	121
Veddas	5,321	6,078	1	1	—	—	—	—	53	61
Others	25,905	29,588	17,212	19,659	2,025	2,314	482	550	287	327

The population of the races for the provinces is estimated on the basis that the race distribution remained the same as at the Census, 1921. The figures should therefore be used with caution, especially in the case of Indian Tamils and Indian Moors. The population of these two races is seriously affected by migration, the flow of which is determined by economic and other conditions prevailing in Ceylon and India.

Estimated Population by Race and Province—(*Continued*)

Race	Eastern Province		North-Western Province		North-Central Province		Province of Uva		Province of Sabaragamuwa	
	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41	Estimated to 26.2.31	Estimated to 31.12.41
All Races (Population Census, 1931)	*Actual count* 212,421	*Estimated* 242,621	*Actual count* 546,966	*Estimated* 624,728	*Actual count* 97,365	*Estimated* 111,207	*Actual count* 578,368	*Estimated* 660,594	*Actual count* 303,243	*Estimated* 346,356
	Estimated		*Estimated*		*Estimated*		*Estimated*		*Estimated*	
Low-country Sinhalese ...	2,403	2,745	182,942	208,951	6,025	6,882	29,718	33,943	31,022	35,432
Kandyan Sinhalese	7,228	8,256	283,320	323,599	67,483	77,077	309,053	352,991	194,647	222,320
Ceylon Tamils	112,217	128,171	15,492	17,694	6,235	7,121	8,064	9,210	1,941	2,217
Indian Tamils	1,510	1,725	26,367	30,116	4,594	5,247	204,156	233,181	63,036	71,998
Ceylon Moors	83,133	94,952	31,236	35,677	11,026	12,594	15,074	17,217	8,081	9,230
Indian Moors	569	650	4,032	4,605	610	697	3,499	3,996	1,421	1,623
Europeans	121	138	203	232	58	66	1,395	1,593	328	375
Burghers and Eurasians ...	1,510	1,725	889	1,015	173	198	1,652	1,887	577	659
Malays	65	74	1,229	1,404	102	117	1,657	1,893	320	366
Veddas	3,511	4,010	—	—	830	948	1,108	1,266	—	—
Others	154	175	1,256	1,435	229	260	2,992	3,417	1,870	2,136

The population of the races for the provinces is estimated on the basis that the race distribution remained the same as at the Census, 1921. The figures should therefore be used with caution, especially in the case of Indian Tamils and Indian Moors. The population of these two races is seriously affected by migration, the flow of which is determined by economic and other conditions prevailing in Ceylon and India.

(3)—Estimated Population by Race

Race	As in 1931	As on December 31, 1943
All Races	5,306,871	6,197,254
Low-country Sinhalese	2,273,291	2,654,704
Kandyan Sinhalese	1,284,775	1,500,334
Ceylon Tamils	610,272	712,663
Indian Tamils	711,028	830,324
Ceylon Moors	297,204	347,068
Indian Moors	38,960	45,496
Europeans	9,577	11,183
Burghers and Eurasians	34,728	40,555
Malays	15,810	18,463
Veddas	5,321	6,213
Others	25,905	30,251

APPENDIX V

STATISTICS OF REVENUE AND EXPENDITURE

(1) Revenue

Year	Rs. c.
1936–37	105,349,724–65
1937–38	113,322,554–39
1938–39	116,928,463–16
1939–40	123,130,498–93
1940–41	132,427,034–81
1941–42	156,545,572–55
1942–43	200,006,747–39

These figures are exclusive of proceeds of loans appropriated by law for special works, and of the Revenue of the Railway and Electrical Undertakings—the accounts of which are commercialised.

(2) Expenditure

Year.	Rs. c.
1936–37	108,757,051–12
1937–38	115,337,075–47
1938–39	127,050,757–04
1939–40	122,356,249–03
1940–41	127,345,109–14
1941–42	153,289,233–01
1942–43	185,006,506–65

These figures are exclusive of expenditure met out of loans, and of the expenditure of the Railway and Electrical Undertakings—the accounts of which are commercialised.

(3) Revenue from Taxation

Year	Customs	Excise	Income Tax	Licences, etc.	Export duties under Medical Wants Ordinance	Total
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
1936–37	54,064,885–92	7,723,584–58	13,605,543–70	1,222,182–85	1,413,693–08	78,029,890–13
1937–38	56,222,468–06	8,136,350–80	17,606,667–20	1,299,234–02	1,312,174–45	84,576,894–53
1938–39	55,308,361–17	7,829,370–33	21,306,579–18	1,217,238–19	1,286,692–76	86,948,241–63
1939–40	59,877,595–48	8,337,136–11	18,794,723–91	1,299,201–79	1,768,978–63	90,077,635–92
1940–41	61,092,416–18	7,890,801–00	28,003,237–14	1,228,146–27	1,894,065–62	100,108,666–21
1941–42	63,733,018–95	12,068,703–44	38,135,348–32	990,758–80	2,151,039–81	117,078,869–32
1942–43	77,925,046–92	13,538,499–38	59,227,070–66	753,241–84	2,159,326–04	153,603,184–84

Revenue from Taxation collected during the years 1938-39 and 1939-40 classified according to sub-heads

	1938–39	1939–40	Percentage of Increase or Decrease
	Rs. c.	Rs. c.	
Customs			
Import Duties			
Cotton Manufactures	1,006,560–53	994,623–98	— 1·19
Grain	11,700,902–35	11,574,799–37	— 1·08
Kerosine oil and motor spirits ...	10,543,816–03	12,639,649–19	+19·88
Malt liquor, wines and spirits ...	2,716,282–37	2,700,890–15	— 0·57
Sugar	8,353,473–15	7,607,662–62	— 8·93
Tobacco and cigarettes	3,639,044–56	6,610,621–89	+81·66
Other goods	13,970,885–86	14,010,152–96	+ 0·28
	51,930,964–85	56,138,400–16	+ 8·10
Export Duties			
Tea	3,335,083–61	3,670,130–82	+10·05
Other goods	9,957–24	18,212–65	+82·91
	3,345,040–85	3,688,343–47	+10·26
Sundries	32,355–47	50,851–85	+57·17
Total	55,308,361–17	59,877,595–48	+ 8·26
Excise			
Country liquor	7,414,225–99	7,678,028–53	+ 3·56
Foreign liquor	99,739–34	114,606–19	+14·90
Matches	315,405–00	544,501–39	+72·32
Total	7,829,370–33	8,337,136–11	+ 6·48
Income Tax, etc.			
Income Tax	17,342,238–34	14,365,485–60	—17·16
Contribution by the Department of Government Electrical Undertakings in lieu of Income Tax and Stamps.	73,375–32	90,535–75	+23·39
Estate Duty	1,112,160–29	1,493,452–18	+34·28
Stamps, including composition duties on bank cheques and share certificates.	2,778,805–23	2,845,250–38	+ 2·39
Total	21,306,579–18	18,794,723–91	—11·78
Licences, etc.			
Licences	665,964–44	730,307–30	+ 9·66
Tax on Heavy Oil Motor Vehicles ...	277,086–49	303,964–14	+ 9·70
Betting tax	274,187–26	264,930–35	— 3·37
Total	1,217,238–19	99,930–79	+ 6·73
Export Duties under Medical Wants Ordinance.	1,286,692–76	1,768,978–63	+37·48

Revenue from Colombo Harbour and Out Ports during the years 1938-39 and 1939-40

	1938–39	1939–40	Percentage of Increase or Decrease
	Rs. c.	Rs. c.	
Revenue of Colombo port			
Port Dues	1,839,839–33	1,490,663–32	—18·97
Harbour Dues	1,382,941–57	1,397,491–50	+ 1·05
Warehouse Rent	750,716–04	801,724–19	+ 6·79
Granaries Rent	201,756–35	248,995–95	+23·43
Other Rents	225,057–63	227,937–55	+ 1·28
Pilotage	280,281–27	174,810–92	—37·63
Harbour Railway	45,686–29	56,194–96	+23·00
Revenue of Oil Installations ...	1,242,801–71	1,256,828–56	+ 1·13
Other Collections	241,527–53	421,505–23	+74·52
	6,210,607–72	6,076,152–18	— 2·16
Revenue of Out Ports			
Galle	96,112–83	66,956–71	—30·33
Trincomalee	14,436–21	16,702–09	+15·69
Jaffna	16,930–72	20,512–15	+21·15
Batticaloa	1,812–42	1,650–79	— 8·91
Other Out ports	61,470–87	34,407–45	—44·03
	190,763–05	140,229–19	—26·49
Total	6,401,370–77	6,216,381–37	— 2·88

APPENDIX VI

SHIPPING STATISTICS

4,001 vessels with a total tonnage of 10,055,641 entered the ports of the island in 1940 against 4,249 vessels with a tonnage of 13,776,733 in 1939. The following table shows the classification under the four General Heads.

	1939		1940	
	No.	Tons	No.	Tons
Merchant vessels (with cargo and in ballast) ...	2,695	11,001,226	1,949	6,400,347
Merchant vessels (called only to coal, oil, etc.)	435	1,458,850	420	1,456,412
Sailing vessels other than coasting vessels ...	935	72,296	1,373	88,975
Warships and transports *	184	1,244,361	259	2,109,907
	4,249	13,776,733	4,001	10,055,641

* Warships, displacement tonnage. Against warships and transports only Colombo figures are shown.

The following table shows the distribution of merchant vessels including vessels which called only for bunkers.

Nationality	1939		1940	
	No.	Tons	No.	Tons
British	2,100	7,440,070	1,674	4,961,738
British colonies	935	72,296	1,373	88,975
Total British vessels	3,035	7,512,366	3,047	5,050,713
American	48	242,377	70	321,487
Belgian	—	—	1	2,832
Danish	46	184,467	26	96,012
Dutch	153	942,205	84	398,006
Egyptian	1	2,372	3	7,739
Estonian	—	—	1	859
French	127	774,411	58	305,734
German	119	634,995	—	—
Greek	42	119,376	71	190,749
Hungarian	3	4,727	3	6,958
Italian	138	787,183	65	347,626
Japanese	161	797,604	126	621,742
Norwegian	157	411,681	146	469,725
Panamanian	2	5,754	8	30,356
Swedish	27	94,012	12	37,003
U.S.S.R.	1	945	—	—
Yugo-slavian	5	17,897	21	58,193
Total Foreign vessels	1,030	5,020,006	695	2,895,021

APPENDIX VII

STATISTICS OF IMPORTS AND EXPORTS

(1) The following table shows the annual value of imports and exports from 1938 onwards, excluding the value of Postal articles, Ships' stores and specie :—

Year	Imports	Exports	Total
	Rupees	*Rupees*	*Rupees*
1938	235,529,101	266,947,407	502,476,508
1939	240,930,697	308,417,749	549,348,446
1940	279,928,907	363,933,978	643,862,885
1941	283,447,720	397,165,410	680,613,130
1942	269,544,729	508,915,351	778,460,080
1943	414,458,245	539,306,294	953,764,539

(2) The total values of Ceylon trade for the last six years, excluding specie, postal articles and ships' stores, but including coal and liquid fuel supplied to steamships, are as follows :—

	Lakhs of Rupees
1938	5,182½
1939	5,667
1940	6,634½
1941	7,031
1942	7,969
1943	9,800

(3) Comparative percentages for the three years 1938, 1939 and 1940 of the value of imports, exports and total trade are as follows :—The figures are exclusive of postal articles, ships' stores and specie :—

	1938	1939	1940
Imports			
United Kingdom	20·64	18·78	17·40
British Possessions	46·54	46·67	51·27
Foreign Countries	32·82	34·55	31·33
Exports			
United Kingdom	47·44	49·03	53·23
British Possessions	17·95	18·68	18·60
Foreign Countries	34·61	32·29	28·17
Total Trade			
United Kingdom	37·99	35·75	34·27
British Possessions	31·71	30·95	32·48
Foreign Countries	30·30	33·30	33·25

(4) The values of the staple products exported from Ceylon during the period 1938 to 1943 are as follows :—

Lakhs of Rupees.

	1938	1939	1940	1941	1942	1943
Tea	1,724	1,880	2,079	2,247	2,537	2,693
Rubber	452	675	1,131	1,182	1,727	1,690
Coconut Oil	140	132	67	76	115	210
Copra	87	71	98	147	278	374
Coconut desiccated	43	71	27	10	21	17
Coconut Poonac	26	20	½	—	—	—
Coconut fibre	20	31	18	10	21	13
Cinnamon	15	20	13	23	49	40
Cocao	14	15	18	21	19	19
Areca nuts	10	11	13	10	62	112
Citronella oil	11	12	11	23	44	27
Plumbago	17	34	57	105	128	104
Coir Yarn	9	8	4	2	4	1
Coconuts, fresh	6	5	2	2	1	6
Skins, dressed or undressed ...	5	4	5	5	9	3
Unmanufactured tobacco ...	6	3	2	6	9	8
Pepain	4	4	3	10	8	10
Cardamoms	4	4	4	7	8	10
Cinnamon (leaf and bark) oil ...	4	3	3	6	5	3

(5) The quantities exported during the same years are :—

		1938	1939	1940	1941	1942	1943
Tea	lbs.	235,739,097	228,062,617	246,369,545	237,537,348	265,675,402	263,884,894
Rubber	lbs.	114,624,081	134,945,213	197,497,340	202,407,035	252,332,795	219,806,011
Coconut oil	cwts.	1,507,935	1,257,637	596,504	563,132	496,581	960,682
Copra	cwts.	1,503,686	1,061,384	1,565,670	2,137,749	2,296,971	2,952,696
Coconut dessicated	cwts.	593,854	672,635	284,879	106,426	112,016	66,007
Coconut poonac	cwts.	733,399	536,321	26,071	3,447	9,120	—
Coconut fibre	cwts.	731,844	888,490	590,962	398,388	416,361	217,885
Cinnamon	cwts.	47,039	56,734	44,207	56,570	62,425	36,959
Cacao	cwts.	72,441	75,151	82,126	72,476	64,945	62,304
Areca nuts...	cwts.	83,949	94,407	97,516	83,944	184,654	161,610
Citronella oil	lbs.	1,603,890	1,548,141	1,334,721	1,385,089	1,782,189	1,354,668
Plumbago	cwts.	235,656	447,929	480,062	534,934	548,644	401,027
Coir Yarn	cwts.	92,124	102,241	62,365	34,454	40,093	10,938
Coconuts, fresh	No.	15,955,030	12,022,167	6,726,915	7,059,633	4,966,837	19,856,910
Skins, dressed or undressed	cwts.	21,303	19,873	21,037	24,652	30,731	12,277
Unmanufactured tobacco	lbs.	2,099,824	1,276,685	771,338	2,290,512	1,973,754	2,178,697
Papain	lbs.	167,903	251,341	190,382	321,343	232,343	232,171
Cardamoms	cwts.	3,659	3,088	3,535	2,991	3,578	3,609
Cinnamon oil (leaf and bark)	oz.	2,786,329	2,426,528	2,159,778	3,118,584	2,008,353	1,297,130

Including ships' stores.

APPENDIX VIII

EDUCATIONAL STATISTICS, 1944

A.—*Types of Schools*	*No. of Schools*	*No. of Pupils or Students on Roll*	
		Male	*Female*
Grand Total ...	6,168	494,130	348,959
(1) ENGLISH ... ... Total ...	353	65,945	29,900
(*a*) Central—			
Government	17	1,912	998
Assisted	—	—	—
(*b*) Collegiate—			
Government	1	554	—
Assisted	21	6,424	1,055
(*c*) Senior Secondary—			
Government	5	1,070	181
Assisted	204(*a*)	39,532	23,261
(*d*) Junior Secondary—			
Government	6	451	123
Assisted	44	5,223	1,889
(*e*) Primary—			
Government	1	373	—
Assisted	27	7,655	2,393
(*f*) Night Schools—			
Government	—	—	—
Assisted	27	2,761	—
(2) BILINGUAL ... ... Total ...	62	10,423	4,771
Government	39	7,562	1,984
Assisted	23	2,861	2,787
(3) VERNACULAR ... ... Total ...	5,268	409,799	312,324
Government	2,239	203,516	138,562
Assisted :—			
Ordinary	1,894(*b*)	170,537	154,072
Estate	918	28,609	15,287
Night	1	21	—
Schools attached to places of worship	216	7,116	4,403
(4) TRAINING SCHOOLS ... Total ...	23	568	422
Government	5	259	51
Assisted	18	309	371
(5) INDUSTRIAL SCHOOLS (*c*) Total ...	126	1,329	1,384
Government	36	189	333
Assisted	90(*d*)	1,140	1,051
(6) TECHNICAL SCHOOLS... Total ...	1	724	73
Government	1	724(*e*)	73
Assisted	—	—	—
(7) PIRIVENAS ... ... Total ...	104	4,794	—
(8) SPECIAL SCHOOLS ... Total ...	4	548	85
School for Deaf and Blind	1	99	85
Maggona Reformatory Schools	2	324	—
Training School for Youthful Offenders (*f*) ...	1	125	—

APPENDIX VIII—*continued.*

A.—*Types of Schools*	*No. of Schools*	*No. of Pupils or Students on Roll*	
		Male	*Female*
(9) UNAIDED SCHOOLS ... Total ...	227		
(a) English and Bilingual	57	Statistics of pupils and teachers have not been obtained in recent years.	
(b) Vernacular	91		
(c) Estate	42		
(d) Schools attached to places of worship	37		

(a) Excluding 1 Special School—School for Deaf and Blind.

(b) Excluding 2 Special Schools—Reformatory Schools for Youthful Offenders.

(c) These are day schools administered by the Ministry of Labour Industry and Commerce, and attended by pupils between the ages of 14 and 21. Weaving and Carpentry form the subjects taught in the majority of these schools. In the remainder, such subjects as Basket Weaving, Embroidery and Sewing, Brass Work, Coir Work, Iron Work, Pottery, Dyeing and Lacquer Work are taught.

(d) Excluding 19 schools registered during the latter part of 1944.

(e) This comprises 604 students attending the Evening Classes and 193 students attending the Day Engineering Classes.

(f) An institution for male offenders between the ages of 16 and 22. Administered by the Ministry of Home Affairs.

As a full population census has not been taken since 1921 it is therefore not possible to give the percentage of children of school-going age.

B.—Comparative Table showing the Number of Assisted and Government Schools in 1931 and 1944

	Western P.			Central P.			Southern P.			Northern P.			Eastern P.		
	1931	1944	Inc.	1931	1944	Inc.	1931	1944	Inc.	1931	1944	Inc.	1931	1944	Inc.
Government—															
Central	—	7	+ 7	—	3	+ 3	—	6	+ 6	—	2	+ 2	—	1	+ 1
English	13	9	— 4	1	1	—	2	3	+ 1	—	—	—	—	—	—
Bilingual	12	16	+ 4	6	7	+ 1	8	10	+ 2	1	1	—	—	—	—
Sinhalese and Tamil	343	469	+126	199	373	+174	244	430	+186	49	84	+ 35	55	110	+ 55
Assisted—															
English	93	122	+ 29	34	47	+ 13	31	33	+ 2	57	51	— 6	12	12	—
Bilingual	6	5	— 1	2	2	—	5	4	— 1	5	10	+ 5	1	1	—
Sinhalese and Tamil	606	648	+ 42	450	653	+203	211	226	+ 15	396	460	+ 64	133	115	— 18

	North-West P.			North-Central P.			Uva P.			Sabaragamuwa P.			Total for the Island		
	1931	1944	Inc.	1931	1944	Inc.	1931	1944	Inc.	1931	1944	Inc.	1931	1944	Inc. or Decrease
Government—															
Central	—	2	+ 2	—	—	—	—	—	—	—	2	+ 2	—	23	+ 23
English	—	—	—	—	—	—	—	—	—	—	—	—	16	13	— 3
Bilingual	1	2	+ 1	—	—	—	—	—	—	3	3	—	31	39	+ 8
Sinhalese and Tamil	165	329	+164	83	138	+ 55	61	186	+125	196	336	+140	1,395	2,455	+1,060
Assisted—															
English	12	12	—	2	3	+ 1	7	7	—	7	9	+ 2	255	296	+ 41
Bilingual	—	—	—	—	—	—	2	1	— 1	1	—	— 1	22	23	+ 1
Sinhalese and Tamil	207	229	+ 22	12	14	+ 2	62	153	+ 91	169	316	+147	2,246	2,814	+568

C.—Comparative Table for the Years 1931 to 1945

Year	Total net Expenditure	Cost of feeding school children	No. of Teachers		No. of Teachers in Training		Pupils on Roll (thousands)	
			Govt.	Assisted	Men	Women	Boys	Girls
	(*Millions of Rupees*)	(*Thousands of Rupees*)						
1931	12·1	—	5,928	12,314	234	165	377	215
1932	12·3	—	5,988	11,851	279	217	392	221
1933	12·4	—	6,111	12,017	451	385	396	235
1934	12·5	—	6,145	12,407	415	338	410	244
1935	16·1	—	6,458	13,085	417	374	430	288
1936	15·6	—	6,229	13,790	457	382	451	276
1937	16·5	241	6,223	14,330	519	413	481	303
1938	17·5	623	7,165	13,463	520	422	487	315
1939	18·3	972	7,613	13,957	492	435	503	325
1940	18·6	1,257	8,050	14,081	559	437	*	*
1941	19·3	1,284	*	*	564	437	*	*
1942	22·4	1,506	8,124	14,039	554	410	(Not available)	
1943	26·5	1,674	8,750	14,167	526	300	472	334
1944	27·6	3,764	9,100	14,250	539	308	486	343
1945	34·2	5,600	9,800	14,400	709	677	500	353

* Accurate figures are not available.

APPENDIX IX

CULTIVATION STATISTICS

Approximate Acreages under Various Crops

A. *General.*

Arecanuts	69,000
Cacao	34,000
Cardamoms	6,000
Cinnamon	26,000
Citronella	23,000
Coconuts	1,238,000
Cotton ...	2,000
Palmyra	50,000
Sugar Cane	1,000
Tobacco	14,000
Total	1,473,000

No significance as to increase or reduction in acreage can be attached to differences between these and the corresponding figures appearing in Appendix F of the Donoughmore Commission Report. Except for coconuts (which was the subject of a fresh survey in 1934), they are derived from substantially the same material; and in all cases the changes merely indicate later revisions. Preparatory work has started upon a further comprehensive census, to be undertaken in 1946.

During the war years attention has been concentrated upon rubber, tea, and food production. Accurate statistics are available for the first two, which were subject to control schemes before the outbreak of war.

B. *Rubber.*

Planted before June, 1934	602,602
Planted 1934–1940	34,543
Planted 1941–1944 (estimated)	20,000
	657,145

Of this, 637,145 acres (i.e. the area planted before 1941) can be considered as mature at present.

C. *Tea.*

Planted before April, 1933	544,011
Planted 1933–1942	5,560
Planted 1943–1944 (estimated)	1,000
	550,571

Of this, 549,571 acres (i.e.—the area planted before 1943) can be considered as mature at present.

Accurate statistics of cultivated acreages, classified according to ownership are not available, but the following estimates have been provided by the Tea and Rubber Commissioner :—

	European owned (including Companies)	*Ceylonese and others owned*
Rubber	40 per cent.	60 per cent.
Tea	70 „ „	30 „ „

D. *Paddy.*

As paddy land may be cultivated twice per annum wherever adequate supplies of water are available, a single figure for "acreage under cultivation" is of doubtful value, and statistics are now being collected separately for each season.

Thousand Acres

Maha (or equivalent) Season					*Yala (or equivalent) Season*				
1924/25	1929/30	1939/40	1943/44	1944/45 (1st Estimate)	1924	1929	1939 (Figures incomplete)	1943	1944
589	547	547	625	645	304	325		392	409

No great accuracy is claimed for any of these figures; but, as the operation of the Internal Purchase Scheme (and particularly the acreage levy) encourages understatement

all along the line, it is unlikely that the increase in the acreage now under cultivation is exaggerated. An independent estimate (based upon reports by Government Agents) of the increase in acreage over pre-war years achieved as a result of the combined food production drives puts it at 100,000 for Maha and 150,000 for Yala.

E. *Other Food Production—Chena and garden crops.*

Thousand acres

	Maha 43/44	*Yala*/44
(1) *Grains, other than Paddy :*		
Kurakkan	60	32·5
Maize	25	2
Meneri	1·5	3·5
Other	5	6
	91·5	44
(2) *Pulses :*		
Green Gram	4·5	8·2
Cowpea	2·5	1·3
Other	0·7	0·9
	7·7	10·4
(3) *Root Crops :*		
Manioc	110	122
Sweet Potatoes	26	26
Other	14	26
	150	174
(4) *Miscellaneous :*		
Chillies	7	7·8
Onions	2·5	2·4
Ginger	1·5	1·7
Turmeric...	1·5	1·5
Pepper	·2	2
	14·5	15·4

Detailed figures are not available for leafy and other vegetables, of which there has been a substantial increase in home and market garden cultivation. Nor are there comparative figures for pre-war years.

The total acreage in chena and garden crops as shown above amounts approximately to—

Maha	*Yala*
264,000	244,000

The following figures were given in Appendix IV. F. of the Donoughmore Commission Report—

Chena products	77,316
Grains, other than paddy and chena products	26,981
Vegetables	30,843
	135,140

LIBRARY OF THE BOMBAY BRANCH OF THE ROYAL ASIATIC SOCIETY

APPENDIX X

COST OF LIVING STATISTICS

There is no general Cost of Living Index in Ceylon ; in fact, the great variety of conditions throughout the Island would make the compilation of a general index practically impossible. The general trend of prices in the War Years, however, may be gathered from two special indices—the Cost of Living Index—Working Class, Colombo Town and the Cost of Living Index—Estate Labourers.

(1) *Cost of Living Index—Working Class, Colombo Town.*

The basis of this index up to 1942 was a family budget survey of 351 working class families in Colombo Town carried out by the Statistics Branch of the Department of Commerce and Industries. Thereafter the index is based on an artificial budget prepared by a Special Committee of the War Council. The details of the budget are given in Sessional Paper XVI of 1943. Since this index provides the only authoritative figures for the cost of living it was adopted as the basis for the payment of War Allowances to Government Servants in receipt of less than a stated salary *per mensem.*

COST OF LIVING INDEX—WORKING CLASS COLOMBO TOWN.

(Average Price November 1938—April, 1939=100)

	1939	1940	1941	1942	1943	1944
January	—	114	117	133	—	197
February	—	110	116	135	189	7
March	—	110	117	143	198	198
April	—	108	115	154	195	198
May	—	107	119	164	194	199
June	—	109	121	160	197	200
July	—	110	123	173	198	200
August	101	112	125	180	200	201
September	107	113	125	178	199	203
October	110	114	125	182	197	204
November	110	117	129	183	197	202
December	111	120	132	—	199	203

(2) *Cost of Living Index—Estate Labourers.*

The basis of this Index up to September, 1942, was the budget for the up-country Adult Male computed on the results of a family budget survey of 227 up-country Estate families. Thereafter the computation is based on an artificial budget recommended by a special Committee and approved by the Board of Indian Immigrant Labour. The details of the budget are given in Appendix XI A of Sessional Paper XXVI of 1941 and Sessional Paper XV of 1943. A Dearness Allowance is paid to the up-country labourer for each point rise in the index number ; the Dearness Allowance for mid-country and low country male labour is scaled down in the ratio of the relative minimum wages. Women and children are paid 4/5th of what the males in the district are paid.

COST OF LIVING INDEX—ESTATE LABOURERS

(Base July–September, 1939 = 100).

	1940	1941	1942	1943	1944
January	—	114	120	173	205
February	—	114	129	190	205
March	—	115	132	194	207
April	103	117	140	206	210
May	103	117	148	190	212
June	103	118	151	193	213
July	104	119	156	196	215
August	105	121	171	203	215
September	107	121	178	199	216
October	108	121	173	199	214
November	109	122	173	201	212
December	111	125	173	203	210

APPENDIX XI

STATISTICS OF BANKING AND FINANCE.

(1) Indices of Note Circulation (Active and Gross), Bank Clearings, Bank Deposits and Savings.

(Note : Average 1934–38 = 100 for all Indices
Except for Bank Deposits for which December 1938 = 100.)

	Note Circulation (Active)	Note Circulation (Gross)	Bank Deposits (i)	Bank Clearings	Savings (ii)
1938					
December	98·0	100·4	—	104·7	128·2
1939					
January	95·4	100·4	—	107·9	129·5
February	97·9	100·4	—	95·8	130·8
March	102·7	100·4	—	122·1	131·5
April	100·7	100·7	—	97·3	133·1
May	97·7	100·7	—	109·9	133·4
June	100·3	100·7	—	114·3	134·1
July	104·7	100·7	—	106·8	135·1
August	104·5	100·7	—	117·5	135·7
September	116·3	109·6	—	116·3	130·5
October	113·9	109·6	—	128·4	129·9
November	117·4	114·0	—	169·6	130·8
December	124·3	118·5	123·28	154·9	132·5
1940					
January	120·1	118·5	—	173·1	137·7
February	119·3	114·0	—	146·0	139·9
March	121·3	118·5	—	139·0	143·2
April	122·1	118·5	—	171·5	144·2
May	134·2	123·2	—	165·1	143·2
June	142·2	132·1	—	176·5	134·7
July	146·7	136·5	—	178·1	130·2
August	148·0	141·0	—	156·3	130·5
September	149·8	145·4	—	160·1	130·8
October	147·7	145·4	—	176·2	131·2
November	145·9	145·4	—	164·8	132·1
December	149·7	145·4	161·32	161·6	135·1
1941					
January	145·5	145·4	—	179·7	136·4
February	146·2	145·7	—	137·1	136·7
March	153·3	142·4	—	170·4	135·7
April	151·6	145·7	—	174·2	135·7
May	154·9	145·7	—	181·5	142·2
June	156·0	150·1	—	193·0	135·7
July	159·3	150·3	—	206·0	135·7
August	169·4	159·2	—	190·0	136·7
September	175·3	159·7	—	174·1	138·3
October	173·6	162·8	—	210·0	139·6
November	184·0	169·0	—	189·4	140·3
December	200·0	191·8	172·25	202·9	134·1
1942					
January	208·4	193·1	—	215·7	129·5
February	229·9	208·7	—	243·4	119·2
March	250·1	229·6	—	250·2	106·8
April	279·2	251·2	—	169·0	99·6
May	291·3	264·8	—	183·2	99·4
June	307·5	278·0	—	198·7	101·0
July...	321·2	289·1	—	212·4	102·3
August	342·2	301·1	—	238·6	104·2
September	371·6	326·9	—	250·5	107·8
October	389·6	339·4	—	248·0	114·4
November	404·4	359·0	—	268·0	115·3
December	423·4	381·3	246·35	211·7	120·1

(i) Bank Deposits including Bankers' Deposits at the Clearing House.
(ii) Total Savings Deposits of Ceylon and Post Office Savings Banks and Savings Certificates.

APPENDIX XI—*continued*

(Note : Average 1934–38 = 100 for all Indices
Except for Bank Deposits for which December 1938 = 100.)

	Note Circulation (Active)	Note Circulation (Gross)	Bank Deposits (i)	Bank Clearings	Savings (ii)
1943					
January	427·4	375·5	—	267·2	125·3
February	438·8	386·2	—	260·4	131·8
March	430·4	380·0	—	261·1	138·0
April	441·4	389·4	—	237·8	142·2
May...	448·6	393·8	—	252·7	149·7
June	447·2	395·8	—	260·8	155·9
July...	453·4	399·6	—	324·0	161·7
August	469·9	407·6	—	281·5	167·2
September	497·7	431·4	—	281·1	173·7
October	500·7	442·5	—	294·4	187·3
November	501·9	442·5	—	270·6	195·8
December	515·9	455·2	282·6	301·8	204·2
1944					
January	524·3	454·3	282·5	263·0	211·7
February	534·1	465·5	284·7	291·6	217·9
March	534·1	464·6	287·2	333·0	223·1
April	562·3	493·8	292·0	299·9	225·3
May...	579·1	504·0	297·2	339·4	230·8
June...	590·3	512·2	312·8	367·3	238·0
July	620·6	543·7	338·3	377·9	246·4
August	644·7	583·3	329·9	384·3	256·2
September	674·9	582·9	347·1	338·6	267·5
October	683·6	613·4	352·2	350·6	278·9
November	709·1	618·9	365·3	362·4	297·7
December	751·7	655·7	368·3	372·3	312·3
1945					
January	741·9	655·2	378·6	435·2	326·3

(i) Bank Deposits including Bankers' Deposits at Clearing House.
(ii) Total Savings Deposits of Ceylon and Post Office Savings Banks and Savings Certificates.

(50199F) Wt. 1004—824 5/46 D.L. G. 373 (T.S. 80439)

(2) Currency Board

Details of Currency Issue—1938–44.

LIABILITIES.

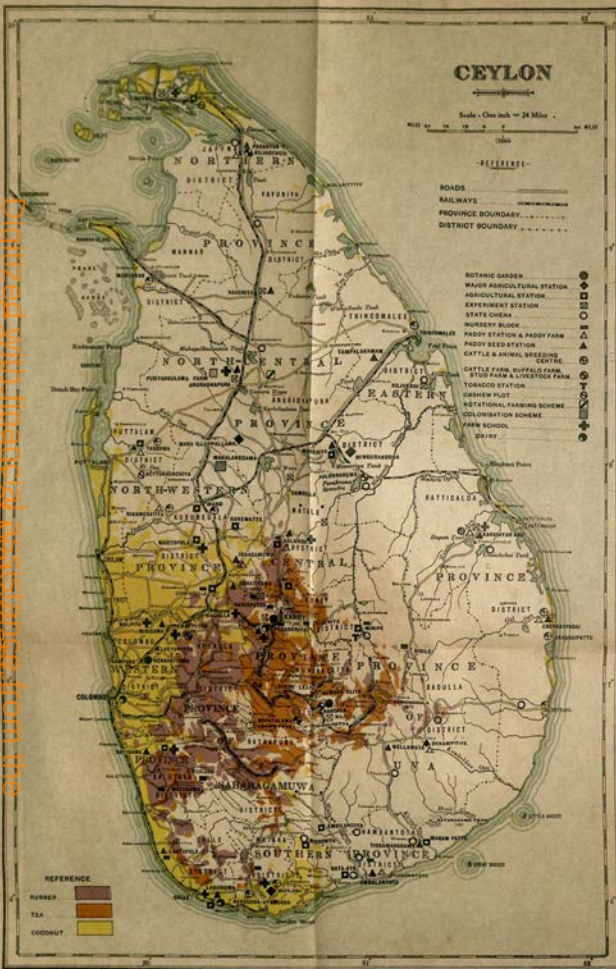
	30.9.1938	30.9.1939	30.9.1940	30.9.1941	30.9.1942	30.9.1943	30.9.1944
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs. (Approximate figures)
Total notes and coin in circulation	52,081,618*	56,457,839*	73,727,289*	82,471,898	163,261,240	203,669,154	277,856,791
Other liabilities, e.g.—amounts due for currency notes encashed overseas, amounts due to Income Account, etc.	—	—	—	120,197	736,905	260	—
Total	52,081,618	56,457,839	73,727,289	82,592,095	163,998,145	203,669,414	277,856,791

ASSETS.

	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs. (Approximate figures)
Silver Rupees	14,404,053	14,484,069	14,598,722	—	—	—	—
Investments at market value (includes realisable value of silver in coins, in circulation and in vault, from 30.9.1944 onwards)	41,778,539	41,760,984	60,467,702	82,666,232	166,065,260	215,171,537	293,206,873
Total	56,182,592	56,245,053	75,066,424	82,666,232	166,065,260	215,171,537	293,206,873
Reserve	4,100,974	212,786	1,339,135	74,137	2,067,115	11,502,123	15,350,082

* Prior to 1st September, 1941, coins were issued by the Central Government which appropriated the profit therefrom. In terms of Ordinance No. 21 of 1941 the Currency Board assumed liability from 1.9.1941 for all coins estimated to be in circulation. Against such liability the Board is allowed to set off the metal value of all silver coins, in circulation and in the vault, as an asset.

00108900



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